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Nos. 82-1248, 82-1278

IN THE

Supreme Court of the United States

October Term, 1982

ELLEN SCHALL, as Commissioner of the New York City Department of Juvenile Justice,

Appellant,

and

ROBERT ABRAMS, as Attorney General of the State of New York,

Intervenor-Appellant,

against

GREGORY MARTIN, LUIS ROSARIO, KENNETH MORGAN, and all others similarly situated,

Appellees.

On Appeal from the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

VOLUME II

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Trial Transcript

Testimony of Steven Hiltz
(Excerpts)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

77 Civ. 6176 (RLC)

UNITED STATES OF AMERICA, ex rel. GREGORY MARTIN, et al.,
Petitioners,

against

ROBERT K. DAVIS, Director of Detention Services,
Human Resources Administration,
Respondent.

[APPEARANCES OMITTED IN PRINTING.]

• • •

[19] STEVEN HILTZ, [called as a witness by Petitioners, was] duly sworn [and] testifie[d] as follows:

Direct Examination by Mr. Guggenheim:

Q. Good morning, Mr. Hiltz. Could you please indicate to the Court your profession?

A. I'm an attorney, licensed to practice in the State of New York.

Q. Have you ever appeared as an attorney in the Family Court of the State of New York?

A. Many, many times.

Q. In what capacity?

A. For eight and a half years I was employed with [20] the Legal Aid Society in the Juvenile Rights Division.

Q. Are you presently employed by that association?

A. No, I am not.

• • •

[24] Q. Focusing now on the intake process, did you have an occasion in your representation of juveniles in the Family Court to appear in the intake part?

A. Almost every day for eight years.

Q. Have you looked at Petitioners' Exhibits 1-A through 29-A?

A. Yes, I have.

Q. Would you describe them—how would you describe them in terms of your experience in Court?

A. I would say they are very typical as to what occurs at the intake stage.

Q. Who is in the courtroom? If you can set the personnel for us in the intake part in the Family Court?

A. There is the judge, there is a court stenographer taking minutes, there is a probation officer who serves the function as the court liaison officer, court clerk, court officers, the defendant, usually a relative with the defendant, an attorney assigned to represent the defendant, prosecutor, either with the City's Corporation Counsel or district attorney, depending upon the charge.

• • •

[25] A. [cont'd]. Also there is usually an arresting officer, sometimes an arresting officer.

• • •

[26] Q. Has the court liaison officer interviewed the juvenile in the typical case?

A. The court liaison officer does not interview the juvenile. Another member of the probation office would interview the juvenile, his parent, the arresting officer, possibly the complainant, write down a recommendation and then, as we say, send it up to the intake part to the liaison officer.

Q. Where does that interview take place and in what process, if you know?

A. It takes place before arraignment in the probation office in the Family Court building, usually the same day right before arraignment.

Q. Does that process have a special name?

[27] A. That process we call probation intake.

Q. So that there are two intake processes. One is probation intake at which the juvenile is interviewed by a member of the staff of the probation department?

A. Right.

Q. The other is the court intake?

A. That's the arraignment.

• • •

[28] Q. How are most petitions filed?

A. Most petitions are filed on the sworn statement on information and belief by the arresting officer or by another member of the police department and an affidavit by the complainant is attached.

Q. At the intake process is an inquiry held with respect to nonhearsay allegations of the truth of the charges?

A. Almost never.

Q. If that did take place, when would that take place?

A. If that did take place, that would be at a probable cause hearing stage within three days.

Q. Three days after what?

A. Three days after the arraignment.

Q. Now, have you also seen Petitioners' Exhibits 1-C, 2-C, and 3-C?

A. Yes.

Q. What are they?

A. Could I see them again? [Petitioners' Exhibits] 2-C and 3-C are endorsement sheets. They are pieces of paper attached to the petition in which the judge briefly describes who is present and what occurs on each individual court date.

Q. Is that the only record kept of the proceeding?

[29] A. No, there is an official record taken by the court stenographer.

• • •

[31] Q. Now, you say that you have represented clients who were held in pretrial detention, is that correct?

A. Yes.

Q. What effect, if any, did that pretrial detention have on a case?

A. Pretrial detention in reality changes the situation drastically. One of the main effects is that if someone is detained before trial, the trial must proceed within a 3 to 14 day period. You have a much shorter time for preparation. When you do go to trial, the judge is the sole trier of facts. There are no jurors in Family Court. The judge at trial is always aware that the juvenile is coming from detention and I would have to believe that the judge, not every

judge, but that many judges, by necessity, are prejudiced somehow by the fact that they know this person is coming from detention, that there is something in this person's background that led another judge to decide that he could not be released before trial. To me, it makes the trial a lot more difficult.

Q. When a juvenile comes into court from the detention facility, how is he brought?

A. He is brought in handcuffs by uniformed court [32] officers from a detention room up into the courtroom through—in Manhattan at least, through a separate entrance.

Q. Are there any other effects of the pretrial detention?

A. Well, probably the worst effect, as I said, aside from the fact if there is any prejudice on the judge's behalf, would be in the preparation itself. Obviously if he is detained, a client cannot come to your office to confer with you. The attorney would have travel up to Spofford in the evening and interview the client and aside from that, really probably the most damaging would be actually preparing for trial in terms of building a defense. I can give you a typical example of the case.

Most juveniles, when they are arrested are arrested at or near the scene of an alleged crime. Usually their defense is that although they were there, they did not take part in it. In order to prove this, a defense lawyer, of course, would want to know who you were with and what you were doing. Probably to win a case, to win a trial, you really have to show that your client was innocent. And the best way of doing that, usually, is to bring in witnesses for your client, the [33] people that he was with at the time.

These juveniles know their best friends by nicknames. You say to him, say who were you with, he says I was with Shorty or I was with Nicky. How could you find this person. Go to the playground. What playground? You could be talking with someone who is the defendant's best friend and I have learned he may be his best friend for years and he literally does not know his last name, he knows exactly where he lives but he does not know it by house number. You say where does he live, he says around 118 and 8th Avenue. What number? Well, it is the red building.

The Legal Aid Society has investigators in each office and based on that information we will try to find these people and it is almost impossible. If the respondent or the defendant is on parole, he can find his friend. I will send an investigator with him. He would go up to the neighborhood and there would be no difficulty in finding his friends for him and then I would have my investigator take a statement, try to get the potential witness to phone me or to come in to see me. If that's unsuccessful, I would try to persuade, as much as I can, to the client to bring in his friends, at the very least, for the day of trial and if they are reluctant, to get them to call me on the phone so I can [34] talk to them about what is involved. When the client is in Spofford and detained, it is almost impossible to find these possible witnesses.

• • •

The Court: Let me ask this question. Has there been any statistics done on this question to highlight the difference in terms of the conviction rate of those who are detained and those who are not? Are there any statistics on that?

The Witness: I don't know.
The Court: You don't know of any?
The Witness: No.

• • •

[35] Q. Are there any other effects on incarceration of which you are aware?

A. Well, the main effects are the manner of preparation, and the effect that if you go to trial you feel that you have at least one strike against you and the fact that the judge knows that someone else has determined that he has been locked up by another judge. Your Honor's point, in practice, as a practicing attorney, I would say when I had a client who came in from remand, my main consideration at that point was to get him paroled and I would say just as a matter of practice there would be many more confessions at that point if I felt he could be paroled after a confession, instead of risking going to trial.

The Court: You mean you are saying it is more likely to create plea bargaining?

The Witness: I would say I would be more likely to plea bargain, if I could get him paroled, to a lesser charge, if he came in from remand.

Q. How about with regard to the final sentencing in the case?

A. To the final sentencing, again, it has a very serious effect on the outcome. In Family Court it is called disposition. It is in effect sentencing. [36] Sentencing takes place if someone is in detention theoretically within 30 days.

The Juvenile Rights Division, while primarily a firm of attorneys who are defense attorneys, also has a quasi-social work function and has been federally funded by the government to have a social work unit. And on almost all of our clients who are on parole, pending the outcome of a trial and sentencing, we try to work with the child initially right at that stage and help with school problems, get him into a program so that at sentencing we can show the judge that this particular individual does not need to be sent away. If he is detained during this period, obviously that cannot be done and the situation will not have changed from the time he is arrested until sentencing except for the fact that he has been detained.

After a conviction, I think this—to get back to your question—after a conviction, another decision again is made as to parole or detention and the standards in the Family Court act are the same, the substantial probability that he may commit another crime or not come back. It has been my experience that once one judge makes a decision, another judge generally will just follow that decision at least until the time of [37] disposition. It is much more likely if someone is detained after a conviction he will continue to be detained until ultimate sentencing and it doesn't happen that often that he is detained before trial and there is a finding and he is released before sentencing.

Also on the other hand, almost always if he is on parole before a trial and he is convicted, most likely he will stay on parole before sentencing. I would say that would be the affect.

Q. What are the possible sentences in the court?

A. The sentences range, first, from outright dismissal on the grounds that no supervision or confinement is necessary.

Q. Could you explain that procedure?

A. Yes. It is hardly ever used. If, let's say, there is a conviction of a very minor charge, then there is a probation investigation and if at sentencing it is determined that this particular individual does not need any services of the court, the judge has the authority to dismiss the case.

Next up the ladder would be a suspended sentence. After that the juvenile at sentencing could be placed on probation for a period of, I believe, up to two years. And instead of probation the juvenile can be sent [38] away, can be placed in one of quite a few places. I would distinguish them between state run placements and places that are run by voluntary agencies and these are all places where he would live away from home and depending upon the place, some more secure than others.

• • •

[39] Q. Is any report furnish[ed] to the Court for the recommended sentence?

A. Yes, a report by the probation department which is called the investigation and report.

Q. When would that investigation and report be ordered?

A. That report is ordered after conviction.

Q. What does the probation department do in rendering its investigation and report?

A. It first reviews the juvenile's record, prior arrests, prior convictions, possibly contacts the school and gets a

report from the school. Interviews the family, interviews the youth. There would also be a psychiatric and psychological study, usually ordered by the Court and it would be up to probation to make sure that's completed and made part of the probation record.

• • •

[42] Q. When they come in to the Court from their home with their parent, where would they go?

A. They would first go to the probation officer [43] and be interviewed by that probation officer.

Q. That process is known as what?

A. Probation intake.

Q. In your experience, who appears in that interview?

A. It is the juvenile with his parent or relative, the police officer and possibly a complaining witness.

> The Court: They would all appear before the probation officer?
>
> The Witness: Theoretically, yes.

Q. In most cases does the complaining witness appear?

A. Well, the child is not entitled to an attorney at that point, so I do not sit in on those, but from my experience, the complaining witness usually does not come to court the first time and merely files an affidavit.

> The Court: Well, I thought we were talking about it going before the probation officer. You were talking about probation intake. The complaining witness appears before the probation officer?
>
> The Witness: Usually not, although sometimes they do.

• • •

[48] Q. If you had a preference for representing a client in the Family Court or the criminal court, which would you choose?

A. Well, at least in terms of an arraignment, almost always choose the criminal court.

Q. Why is that?

A. Well, in criminal court at arraignment, we are talking about the decision as to whether parole or remand and in criminal court there is only one standard and that is whether or not the person before the judge, the judge believes whether or not the person will come back to [49] court at the next court date. In Family Court, they get into many side issues, including, if the judge decides that a person should not be sent home, he has the option of saying this person may very likely commit another crime. In criminal court, of course, the judge cannot say that.

Also there is bail in criminal court where there is no bail provisions for Family Court.

• • •

Cross-examination by Ms. Gordon:

• • •

[52] Q. By the way, in the ordinary course, that 739 [53] hearing takes place the very next day after the child is taken into custody, isn't that right?

A. If he is still in custody, yes.

Q. So it takes place the next day. Is there an exception to that?

A. Yes. If the petition cannot be filed on time or if there is some other reason why it is not practical to have the child arraigned or have the 739 hearing, he must be brought before the Judge in 24 hours and the Judge can

hold him for an additional, can detain him for an additional 24 hours before that 739 hearing.

Q. So it is two days, two 24-hour periods?

A. Yes.

• • •

[55] Q. You described to the Judge in talking about the potential sentences, a procedure that probation goes through. Is that analogous to a pre-sentence report as we know it, for example, in the federal court?

A. It is analogous to it, yes. There is one major difference.

Q. You can tell us.

A. It is probably the heart of the Family Court. That a juvenile is given a right to a full dispositional [56] hearing, possibly testimony and cross-examination of witnesses which, to my understanding, is not as extensive in criminal court.

Q. Now, I would like to turn to the language of the statute that we have particularly in issue in this case and that is 739.

739 says in part • • • "Release or Detention after Filing of Petition and Prior to Order of Disposition."

Now, release, I take it, means—

A. Parole.

• • •

[57] Q. The other statutory term is detention. You said in your direct examination remand. Were you using those two terms synonymously, detention and remand?

A. Yes, I was. That's the term that the Court uses, usually it is "remand."

• • •

[58] Q. When did you leave your position with the Legal Aid Society?

A. June of 1979.

Q. When you left, was the Department of Juvenile Justice of the City of New York in being?

A. It was being formed.

• • •

[64] Q. • • • It is not necessarily true that a child has to come to a 739 hearing from a custody, is it? I mean a custody other than his parents? That 739 hearing can arise in the course of the proceedings after the filing of the petition and not necessarily immediately following, for example, an arrest?

A. It follows immediately after the filing of the petition.

Q. But the child doesn't necessarily have to be [65] previously detained?

A. No. He can be released by the police after the arrest and be given a date to come to court.

• • •

Redirect Examination by Mr. Guggenheim:

• • •

[68] Q. [By the Court] Do you see it [the probation recommendation for parole or remand] as the counsel for the child?

A. I hear it read to the Court.

Q. You hear it read?

A. Yes.

Q. But there may be some other matters on there that—the piece of paper or whatever it is, is not given to you?

A. Well, anything the Judge hears or sees, I, of course, have a right to hear or see.

• • •

[70] Q. • • • [D]o you know what a termination without adjustment is?

A. It is where a case is not filed for some other reason than the fact that the child cooperated with the Probation Department and agreed to their adjustment terms.

• • •

Testimony of Hubert Benjamin
(Excerpts)

[157] HUBERT BENJAMIN, [called as a witness by Petitioners, was] duly sworn [and] testified as follows:

Direct Examination by Mr. Guggenheim:

Q. Mr. Benjamin, by whom are you employed?

A. I am employed by the * * * New York City Department of Probation.

Q. What is your position there?

A. My position is supervising probation officers.

Q. How long have you had that position?

A. I have had the position since the year 1968.

Q. How long have you been a probation officer?

A. I have been a probation officer for 30 years.

Q. Where do you work?

A. I work in the Bronx Family Court, 900 Sheridan Avenue, Bronx, New York.

[158] Q. What is the principal function that you perfrom in your job?

A. I am the supervisor of probation officers working in the Intake Department of the Probation Service.

* * *

[159] Q. Focusing your attention on the time that the juvenile comes into the building and then is brought before a probation officer for an interview at the intake level, what takes place?

A. Well, there are many variables. A child may come in on a personal recog, they come in being escorted by a police officer. * * *

* * *

Q. Describe both situations, please.

A. If a youngster is brought in by the police officer, it may be that that youngster may be placed in a temporary detention facility if he is in their custody or handcuffed and the officer does not feel he should be freed at the time. Also a youngster may come in on a recog, that is when he is arrested, the police department feels that it is not necessary to detain him or place [him] or [her] in detention and they recog the child to a person they feel is capable of adequately supervising the child until the date they are to appear in court.

Now, if a child appears in court with the parent or guardian or whoever signed the recog, they are [160] asked to stay in a waiting room * * *. We have our clerks who register the case. Then it is assigned to a probation officer, intake officer.

Now, in order to proceed, for the intake officer to proceed, we have to wait for the complainant to appear. That is the one who signed the complaint or made the complaint to the police officer, provided it [the complainant] was not a police officer. Sometimes the police officers are the complainants. [The] case is assigned to the intake officer and if the complainant does appear, there is an interview with the complainant as to the charges as stipulated and then there is an interview with the child and his or her parents or guardian.

It is then after these interviews the probation officer then checks for prior records. The youngster may be involved in prior records in another borough or within the same building.

The officer then decides whether this case may be adjusted and the word "adjusted" means that it does not need the Court's intervention or whether it needs to go to court. If the intake officer decides that this case must go to court, he then refers the case for a petition to be drawn.

[161] The intake officer, must also, when he does that, make a recommendation as to whether this youngster may be paroled or remanded. This is a required function of the intake officer.

Q. Upon what basis is that decision made, that recommendation made?

A. The decision is based on law in general. That is, whether the intake officer feels that this child may be a calculated risk if returned to the community. That he may not return if allowed to go home and that he may be a danger to himself or others in the community if he were permitted to return to the community.

The Court: On what basis is that made? What basis are those kind of decisions made?

The Witness: It is based on the law of the Family Court Act, I believe—

The Court: I am not asking that. I don't believe that probation officers look to the [A]ct every time. They have to make the basis on some kind of decision of their own. How do they make such decision?

The Witness: The decision whether to remand or parole?

The Court: Yes. When a child is going to be a danger to himself or the community?

[162] The Witness: That comes from the gathering of facts during the interview.

The Court: What kind of facts are they?

The Witness: The nature of the case, the attitudes of the parties involved, the prior records.

The Court: Attitudes of what parties?

The Witness: The attitudes of the respondent child and/or parents or guardian, whoever is with them.

The Court: Parent and child. What else?

The Witness: The prior records. The nature of the prior records.

The Court: What else, if anything?

The Witness: Well, that's all I can think of at the present time. Of course, I would have to truthfully say that the nature of the current involvement would also be a consideration.

• • •

[164] The Court: Suppose the complaining witness does not want to appear, does not want to get involved, what happens?

The Witness: If the case is a designated felony, it must be referred for petition. Then it is up to the prosecutorial services to decide what happens to the case. That is the Corporation Counsel or the District Attorney's office.

• • •

[166] The Court: Suppose it is not a designated felon, then what happens?

The Witness: If the complainant does not show?

The Court: Yes.

The Witness: We will statistically mark that case terminated without adjustment.

The Court: And the child is released?

The Witness: Yes, sir.

The Court: I think I now have that clear. All right. I now want to know about what happens when the child is brought in—you said there was a difference when the child is brought in by the arresting officer and is detained, put in detention, I think you said that.

The Witness: Maybe. It depends. Usually at that time the child may be brought in in handcuffs.

The Court: I want to know the difference between when he is brought in and arrested, in handcuffs, or whatever, what's the difference in the procedure?

The Witness: Usually the difference in the procedure is that there is no parent or guardian available. The officers are instructed when they make the arrests that they must contact some person or some relative or adult friend to ascertain whether they will [167] appear in behalf of this particular child.

We have parents, guardians who say they do not wish to come in and place the youngster, they don't want to have anything to do with the child, do whatever you want with the child. So, in many instances, when the officer appears in court and he does not have any parent or adult or relative with this child, we, as a general practice and depends perhaps, not perhaps, on the allegation, will then interview the child, and I might add that we first advise them of their rights. They may or may not answer any questions. That's up to them.

Then we petition the court and that depends upon the nature of the allegations and the current charge to consider a temporary detention of not more than 72 hours and not less than 24 hours, contemplating that a petition may be drawn. May I add?

If we are aware that a petition will not be drawn, the complainant says, "Well, I was responsible for the taking into custody of this youngster but I do not wish to go forward," then we cannot, even though a parent does not appear or no one appears with the child, we cannot ask for his detention. We must release him because we have no case.

The Court: All right.

• • •

[169] Q. Mr. Benjamin, there has been testimony already in this case that many petitions are filed on information and belief in the Family Court. Is that right, to your knowledge?

A. I didn't hear the testimony and to my knowledge it is no longer correct. It is no longer a general situation, to my knowledge.

Q. What I mean by the question is that in many cases the complainant doesn't actually sign the petition based on personal—by coming into court but rather a police officer would sign it on behalf of a complainant?

A. I understand what you meant, sir. I repeat, that no longer is the general condition, as far as I know. It used to be. The Corporation Counsel is now insisting that there be a complainant and that where the police liaison officer, as you described, were signing petitions on behalf of the

police or whatever, that is no longer a general situation, as I know it.

Q. Does that happen at all?

A. I say it is no longer a general condition which infers that it may happen.

Q. The answer would be yes?

A. Yes.

[170] Q. When it does happen, did the complainant come to the interview?

A. No.

Q. So that petitions are filed in court even without the complainant appearing at the probation interview, is that correct?

A. Yes. May I just add something. You mentioned it and since you brought it to the Court's attention, that regards the police excusal program. You may have a complainant signing a deposition which sometimes precludes their having to appear for the interview with the probation department.

Q. That deposition would be signed at the police station?

A. That's correct.

Q. So then they don't come to court for the intake part at all?

A. They are supposed to be there but if they don't we can still proceed without their physical presence.

Q. What are the job qualifications for a probation officer?

A. The initial qualifications are a Master's degree in social work or sociology and/or related fields. [171] Should the probation officer not have a Master's degree, he

may have a Bachelor's degree in sociology or related fields and two years' paid experience in social work for related fields.

Q. Are there many probation officers who are on staff in the City of New York to your knowledge who do not have a Master's degree?

A. Yes.

The Court: Well, as I understand it, if you have a Master's degree, you don't need experience, but if you have a Bachelor's degree, you need to have several years' experience?

The Witness: Yes, sir, paid experience.

• • •

[171] *Cross-examination [by Ms. Miller]:*

• • •

[173] Q. And is it also true that you are required to advise both the complaining witness and the juvenile • • • that they are not compelled to have a preliminary conference with probation?

A. That's quite true.

The Court: They are not compelled to have a preliminary conference?

The Witness: That's right. I stated that they are advised of their rights and their rights are that they do not have to participate in the adjustment procedures.

Q. This is a voluntary procedure, is that correct?

A. That's correct. It is entirely voluntary.

• • •

[178] Q. * * * When you are making a recommendation [to the court], you can recommend parole to the parent or a responsible adult, parole to alternative detention or remand?

A. Correct.

Q. Those are your three options?

A. Yes.

Q. Is it the purpose of remand to alternative detention to keep the child at home but give him a more structured environment?

A. Yes.

* * *

[179] The Court: What is this alternative? Is that to a detention center, is that what that means, Mr. Benjamin?

The Witness: It is an alternative detention. This child, rather, is a risk to be returned to the community but if he were adequately and properly supervised, he could be returned to the community and [180] this is an alternative detention. It is an 8:00 to 5:00 activity if the child is involved in school and recreational activities and it is supervised. In fact, he may also stay there until 10:00.

The Court: Stay there until when?

The Witness: Until 10:00, because there is an evening program from 7:00 to 10:00.

The Court: What happens when he goes—

The Witness: He is fed there too, or she.

The Court: He goes there and after eight hours, what happens? He goes home?

The Witness: Yes.

The Court: He has to report to this place?

The Witness: Every school day.

The Court: It seems it would be like a halfway house or something like that?

The Witness: Yes, I would say so, yes.

• • •

[181] Q. Is there an educational facility at the day center?

A. Yes, there is. Licensed teachers and counseling and recreation facilities.

Q. Under the Board of Education supervision, is that correct?

A. Yes.

Q. Alternative to detention is strictly an interim form of referral, is it not? In other words, a child can be paroled to alternative detention together with his family but only until the time of fact finding, is that correct?

A. Yes. I would say substantially

Q. It is not a recourse at disposition?

A. No, no, it is not.

• • •

[182] The Court: What are you showing him now?

Ms. Miller: [Petitioners'] Exhibit 1-C.

The Court: What's the question?

Q. Mr. Benjamin, on these endorsements, the judge frequently after the fact-finding hearing indicates an I and R is ordered. Could you tell me what that is, please?

A. Yes, I believe I can. It is an instruction to the probation department to do an investigation and make a report with a recommendation on the adjourned date.

• • •

[183] Q. Mr. Benjamin, what is the investigation report, would you tell the Court, please?

• • •

A. As I stated, the judge orders an I and R as you say, that means an investigation to be done and a report to be made by the probation department on the adjourned date. The probation officer then gathers facts [184] through interviews and research and what have you on this particular situation. That is, he has the benefit of our probation intake records. He gathers his facts from the community, made from witnesses from the schools, prior records from other bureaus, if that be the case, and from that the probation officer then gets to the recommendation after consultation with his supervisor who must sign that report. It is then submitted to the judge.

• • •

Q. There is an additional order that appears frequently on this endorsement sheet which is an order for BMHS. Could you identify that for me? Is that an order to probation?

A. No, it is not to probation. It is to the Bureau of Mental Health Services. That is an order for the Bureau of Mental Health Services to perform either an emergency diagnostic report or a regular psychiatric report which includes a psychological and a psychiatric report.

• • •

[185] The Court: You don't have a psychological profile to deal with in terms of the intake probation interview. That's not a base for your recommendation for parole, remand or recommendation as an alternative to detention. You have no psychological profile?

The Witness: No, sir.

Ms. Miller: Could I ask one question?

Q. Isn't it possible, though, Mr. Benjamin, if it appears to the probation officer that the child has a problem at the intake interview he can order an emergency Bureau of Mental Health Services study before a petition is drawn and before the child is taken to court?

A. That's correct.

The Court: But what I am talking about is the exceptional circumstance. As a general rule, you don't go to any psychiatric or psychological analysis on the basis of your recommendation, is that correct?

The Witness: No, sir. If I may, I heard you state you only like to answer questions directly, but if I may, we did have such a procedure but no longer.

• • •

[186] *Redirect Examination by Mr. Guggenheim:*

• • •

[188] The Court: Based on your own experience in terms of these intake interviews, what would be your estimate of the amount of time you take in terms of these intake interviews? How much time does it take, just roughly?

The Witness: It is an individual thing. I instruct my staff to—

The Court: I am talking about you. I'm not talking about—

The Witness: I apply it to myself. 45 minutes, I would need for an interview. There may be times —there are times in some cases where you have to spend a few hours and some 45 minutes and some less than [189] 45 minutes. But to do a fairly good job with the pressures that you have in intake, 45 minutes should be an appropriate amount of time.

The Court: That includes interviewing the complainant—

The Witness: All parties.

• • •

Testimony of Michael Bigley
(Excerpts)

[190] MICHAEL BIGLEY, [called as a witness by the State, was] duly sworn [and] testified as follows:

Direct Examination by Ms. Gordon:

Q. Mr. Bigley, by whom are you employed?

A. I am employed by the New York Division for Youth.

Q. What is your present position with the division?

A. I am director of the Detention Services Section.

Q. How long have you been the director of detention services?

A. Just over a year.

Q. What did you do prior to that?

A. Prior to that I was a Detention Services Section consultant which is a staff position in the same department.

Q. For approximately how long were you a staff consultant?

A. Approximately two and a half years.

Q. Did you hold any other positions or do any other work for DFY?

A. The year before I became a consultant I worked [191] on the detention services study unit which did a statewide study of detention and the year before that I was a program coordinator for the Division for Youth rehabilitation facility for the Hudson Training School.

Q. The study you mentioned, did it actually come out in a written report?

A. Yes, it is a study titled "Detention Services Policies and Practice, 1977".

Q. Just briefly, what kind of work did you do before you came to DFY or before you went to Hudson?

A. Prior to coming to the Division for Youth, I worked in New Jersey as a residential treatment task force program specialist with a psychological specialty. I worked in a diagnostic center in Pennsylvania, juvenile justice related diagnostic center in Pennsylvania. I was a youth division counselor in a YDC [Youth Development Center] for four years, two of which were part-time while I was in graduate school. And while I was in graduate school, I worked as a case worker in a child welfare agency and as a therapist in a child psychiatric center.

• • •

[192] Q. What degree, if any, do you hold?

A. I have a bachelor of science degree in psychology and a Master's of social services from Bryn Mawr College.

Q. Are the social [services] the same as social work?

A. Yes.

The Court: Where did you get your bachelor's degree?

The Witness: Penn State.

• • •

Q. Are you a member of any professional associations?

A. I am a member of the National Association of Social Workers, Academy of Certified Social Workers. I am a New York State Certified Social Worker and a member of the National Juvenile Detention Association.

Q. Have you had occasion to lecture to your professional associates regarding the detention of juveniles?

A. Yes. Several times in the past few years I have spoken, for example, with the National Youth Work [193]

Alliance. I have spoken to the Child Care Workers Association. I have done a variety of in-service training including the juvenile aid officers in New York State and I will be, at the end of this month, speaking to a LEAA sponsored symposium on children in jails.

Q. What is the subject of your upcoming talk?

A. Alternatives to jail placement.

> The Court: What's the total amount of years—well, I will include, I think, it was two years while you were in graduate school. What's the total amount of time you have spent in this field? It seems to me your whole work career experience has been in some relationship to the area? How long has that been?
>
> The Witness: I started in the YDC's [Youth Development Centers] in the summers between my junior and senior years in college in 1968.
>
> The Court: You have been working at it more or less ever since?
>
> The Witness: Yes, sir, it has been my only job area.

Q. With respect to your upcoming talk about alternatives to jail placement, I take it is alternatives to jail type placements for juveniles that you will be speaking about?

[194] A. Yes, it is. We have produced this handbook which describes New York State's alternatives to secure detention and it is that handbook that has piqued the interest of the people who are running the conference and caused me to be invited.

• • •

Q. Now turning your attention to your capacity as director of detention services. What is the difference, if there is any, between detention and long term care as those terms are used by DFY in their regulations and literature?

A. Detention for us is specifically the short term care between the time a child is taken into custody either by arrest or through the court, through the fact [195] finding, through the investigation stage, through the dispositional stage and pending the placement that is ordered at the dispositional hearing. Longer term care starts at that point. It is the care ordered at the dispositional hearing.

• • •

Q. What is your jurisdiction as the director of detention services over detention or short term care facilities in the state?

A. We are, for the most part, the regulatory and certifying agency for locally operated detention facilities. The single exception to that is the small 14 bed secure facility at Highland which we operate directly as a demonstration project. We do visiting, inspecting, monitoring of facilities, of population, technical assistance, program development with the agencies responsible for administering detention locally.

Q. Is it part of this obligation to certify or license every single detention within the parameters of the term as you have described it, every single detention [196] agency in the state?

A. Yes, it is. We issue operating certificates on an annual basis.

The Court: Am I to understand from that, Mr. Bigley, that institutions that have been described

previously as secure detention are not really state agencies, they are merely licensed by the program?

The Witness: Yes. In New York City Spofford has been operated for years by the Human Resources Administration or agency, HRA, special services for children and only in July of this past year did it come under the jurisdiction of the Department of Juvenile Justice which was created at that time. • • •

• • •

The Court: Let me get something else clear [197] since you have mentioned this. Are these agencies public institutions, that is, are they operated by local political units, for example, the city or private agencies or by both?

The Witness: The secures are largely operated by the public agencies, county, pieces of counties, government or city government. The nonsecures, some are operated by local governmental agencies and some are operated by private agencies.

The Court: I understand.

Q. In addition to your certification and inspection functions, does state DFY have any funding relationship to these detention facilities?

A. Yes. The Division for Youth reimburses the local government 50 percent of their costs for a detention operation.

• • •

[201] Q. What is the detention capacity of New York State, if you know?

A. The capacity changes almost daily because of the opening and closing of some of the small nonsecure facilities, foster home bed space changes. It is approximately 900 to 950 beds at any given time.

Q. Approximately or exactly, if you know, how much of that capacity is secure beds?

A. 395 secure beds in institutional facilities. There are additional * * * beds in 48-hour holdover facilities in remote parts of the state.

Q. In the holdover facilities, are those nonsecure or secure beds?

A. Those are secure. They are maximum three beds and maximum 48 hour length of stay. They are used to avoid middle of the night, long term transportation problems. There is one on the Canadian border, one in Erie, Pennsylvania and one in Niagara Falls.

Q. How many beds are there?

A. Secure?

Q. Yes.

[202] A. Just those nine.

Q. And the balance of some 550 are nonsecure beds?

A. Yes, it does.

Q. Spofford is a secure facility, is that right?

A. Yes.

Q. What is the bed capacity at Spofford?

A. The certified capacity is 212.

Q. Is it generally fully utilized?

The Court: I see Mr. Bigley was very careful in that answer and the next one will answer that.

Q. Is there a full utilization of those 212 beds in Spofford?

A. No, the population at Spofford in the last several months has been varying between approximately 160 and 190, let's say, running probably close to 180 in the last couple of weeks.

Q. Approximately how many nonsecure beds are there in New York City?

A. There are 56 certified nonsecure beds in the city.

Q. Does New York City hold any PINS [persons in need of supervision] children in nonsecure beds?

A. Not in certified detention facilities at this time. The Department of Juvenile Justice which operates [203] detention facilities has, as part of its enacting resolution, jurisdiction over JOs [juvenile offenders], juvenile delinquents and runaways and not status offender PINS kids. They [PINS] are going to the Human Resources Administration, special services for children, into temporary shelters and other kinds of emergency care.

Q. In other parts of the state where DJJ does not operate, obviously, are PINS children held in nonsecure detention?

A. Yes, they are.

• • •

[204] Q. Do you know what the average length of stay in secure detention for juvenile offenders and juvenile delinquents is on a statewide basis, currently?

A. I have those figures here. The juvenile offender population has a longer length of stay because of the time it takes to go through the various processes in the adult court

system. They have the arraignments and Grand Jury indictments. But for children who are juvenile offenders, the average length of stay is 24.3 days.

Q. Is that in secure?

A. Yes.

Q. How many [days for] juvenile delinquents in secure detention?

A. 12.2 days.

• • •

[205] Q. With respect to nonsecure detention, would you tell us what the average length of stay is for JOs and JDs in nonsecure detention?

A. The average length of stay for juvenile offenders in nonsecure is technically 38.5 but the numbers are almost meaningless because we are talking about a very few number of JOs being held nonsecurely. One JO stayed 132 days and that mixed up the rest of the numbers considerably. The delinquent petitions in nonsecure detention had an average stay of 21.9 days.

Q. What period of time do these numbers you are giving us refer to, '78, '79?

A. This is all for calendar year 1979.

[206] Q. Do you have any information available to you or statistics available to you on the number of juvenile delinquent arrests versus the number of juveniles detained after arrests?

A. The best numbers that we have on that are 1978 statistics.

Q. Do you have the 1978 statistic for the number of JDs and JOs arrested?

A. The number of JDs and JOs arrested in 1978 in New York [State] from DCJ[S] [Division of Criminal Justice Services] was reported to us as 93,184.

Q. Do you have the number of initial admissions of JOs and JDs to secure detention for 1978?

A. Yes, I do. 7,362.

Q. Have you calculated a percentage of these initial secure admissions of JOs and JDs against arrests?

A. It is approximately 7.9 percent.

• • •

[207] Q. Do you have any information that shows what percentage of initial secure JO or JD admissions stay in secure detention three days or more?

A. Approximately 50 percent. The 2500 of the 5400 admissions are released in three days or less. So approximately 50 percent. That would be just the JD population.

Q. What is the rate with respect to JOs?

A. The JOs it is approximately 700 or 1200 are released in three days or less.

Q. If you—what is the result with the 7.9 percent if you use the 3-day figure?

A. It would be decreased by 50 percent so it would be approximately 4 percent or less.

• • •

[209] Q. Since I am looking for the security aspect, Mr. Bigley, I would just like you to tell us what does—what is the definition of secure detention in New York State? What does secure mean?

A. Secure detention is detention in a facility characterized by restricting construction, hardware and procedures for the short term duration that I spoke of earlier.

Q. Is that definition of secure detention consistent with your understanding of the use of the term by other states?

A. Yes, it is.

Q. Is there any standard promulgated by any association, professional association, with regard to the number of secure detention[s] of arrest[ed] * * * juveniles that [210] the association publishing it feels is an appropriate level of secure detention?

A. Yes, there is. The national standard that has been thrown out a number of times, I believe, first the NCCD, National Counsel on Crime and Delinquency, has recommended that no more that 10 percent of the arrests should be detained, if proper detention screening is being done.

Q. And the 10 percent refers to a secure detention?

A. Yes, it does. Very few places have a nonsecure network that we have.

• • •

[213] Q. Based on your experience, what factors account for the drop in the initial admissions of, let's say, JDs to secure detention over that 3 day period that you gave us?

A. There are a variety of issues. Basically the 1 to 3 day stays are not court remanded, although there will always be exceptions to that. These are basically children who are admitted on arrest and then brought to court within the 1 to 3 day period that's required by law. At that point there can be [214] several changes. The parents could have already come to detention and picked them up when they weren't available when the policemen took custody of the child.

The secure center itself or nonsecure center could have released the child to his parents when it got in touch with them. The child could have gone to probation and they could have diverted or adjusted, or dismissed the case. It could have been, the child could have been released at the end of a hearing in Family Court when he would have been, again, dismissed, released to a nonsecure setting, released to any agency or sent home.

• • •

[217] Q. Doesn't every secure facility in the state have screening personnel at the facility?

[218] A. Yes, it does.

Q. What is the purpose of those screening personnel as [ ] at Spofford?

A. There are two levels. One, is this a legal detention case and can the child be admitted or does the child need to be held securely or can we transfer the child to a nonsecure facility.

• • •

Q. What is the first obligation, if there is any, at the secure facility when a child is brought in?

A. The first obligation is to determine if the child can be legally detained; if there has been an arrest or if there is a warrant or if there is a court order for the detention. The second obligation is [to] determine[] if the child needs to be held securely or can be held nonsecurely.

• • •

[220] Q. Who determines whether an alleged juvenile delinquent or a JO who is in the Family Court system should be detained secure or nonsecure?

A. The administrators of the detention program in the locality where the child is to be detained.

The Court: Who did you say was that?

The Witness: The administrators of the detention program. In the city it would be a decision made by the assessment unit of the Department of Juvenile Justice.

• • •

Q. The determination for children who have appeared in Court under 739, is there required to be any determination by the judge before the local agency [221] determines secure versus nonsecure?

A. Just the general detention remand and then the agency would make a secure-nonsecure decision based on the information it could gather.

• • •

[227] Q. Is a detention order under article 7, the 739 order, is that the same as or different from a shelter care remand?

A. Detention remand is a remand in our system, at least, a remand for supervision, authoritative supervision and a shelter remand, while it is not my [228] jurisdiction, I would assume would be for protection or for some other dependency need.

Q. The nonsecure detention facilities that you had reference to, do they come under the 739 rubric of detention or under shelter care?

A. Nonsecure detention comes under 739.

Q. Do you have any information available to you, Mr. Bigley, as to whether or not children admitted to detention are admitted one or more times?

A. Our admissions are broken down by first admission and readmission, basically to the same facility. But since most of our kids are held in their own counties, that's fairly reliable data. Only 51 percent of all our admissions are first admissions to secure detention. That's based on our total figures, male and female.

Q. Would you mind telling us a little more clearly, what is the implication of that. What conclusions can you draw about the balance or what data do you have about the balance, that is other than the 51 percent?

A. The balance would have been children who had been admitted before on either other prior charges or on the same charge but something else had changed in the meantime. For example, a child who was detained and then [229] released home and absconded from home or missed a court date, might be redetained, that would be a readmission. But if the child was brought to court and remanded back to detention the same day, that would not be a readmission.

• • •

[233] *Cross-examination by Mr. Guggenheim:*

• • •

[234] Q. Mr. Bigley, you indicated in your background that you were involved in the publication and writing of the report Juvenile Detention in New York State 1977 policy and Practice [Petitioners' Exhibit 36 for identification], is that right?

[235] A. Yes.

Q. Did you write this report?

A. I wrote sections of it. It was a four-person, four different people writing on it.

Q. Are there negative affects of detention on juveniles?

A. I would say that there are negative affects of inappropriate detention.

Q. At page 19 of the report of 1977, it is indicated that punishing, treating or evaluating the child at the time of detention may be an error for the facts of the case have not been established?

• • •

[236] Q. Do you concur with that position?

A. In context, I don't know how many people have read the report—the issue there is to detain, you should detain to hold for court or to hold for or at the direction of court and to detain for the purpose of one of those other services, I would support yes, it is an error. Not to say that those services don't exist and not to say that those services aren't beneficial in terms of the program. But to detain for those purposes would be an error.

Q. Are there harmful affects of secure detention, on a juvenile?

A. Potentially.

Q. In fact, at page 20 of the report, it is written that the most subtle but perhaps the most harmful effect of secure detention is the creation of and the impression left by a high security atmosphere which is concerned about possibly breaking out and physical attacks against staff.

[237] Do you agree with that statement?

A. Yes. I think you should also—to put that in context, it was written at a time when there were status offenders

and delinquents and the full range of charges before the Court in detention facilities. And at that point the problem was you had to gear up for the most difficult to handle and that was oppressive say, for example, status offenders. At this point we removed all the status offenders from secure detention statewide. We are now geared up for a more consistent population.

Q. Do you regard the detention center at Spofford to be one of a high security atmosphere?

A. To some extent, not high security the way the adolescent unit [for 16 to 19 year olds] at Riker's might be for example.

Q. How about high security in the way it was written in this report, sufficient to potentially affect or harmfully affect the juvenile?

A. My memory of what we were writing about there isn't strong because because it was some years ago. There is a potential for that.

Q. Spofford was one of the institutions about which you were writing in 1977, isn't that correct?

A. Yes.

Q. Isn't it correct that Spofford is significantly [238] more secure today than in 1977?

A. Yes.

Q. Are there bars on the windows?

A. Yes, there are.

Q. Now, we have already heard testimony that there are juvenile offenders being held in Spofford, is that right?

A. Yes.

Q. Juvenile offenders are actually prosecuted in the adult court today in this state, right?

A. Yes.

Q. So that juvenile delinquents are now co-mingled with the category of persons who are being prosecuted through the adult court system, is that right?

A. Yes.

Q. In fact, at Spofford, juveniles have to undergo strip searches on occasions, isn't that right?

A. There are strip searches, yes.

• • •

The Court: You mean there are strip searches in Spofford in terms—is that in the terms defined in [239] the adult area?

The Witness: You see that's one of the problems. A child admitted to Spofford is taken into a side room where he changes clothes. We are not talking about cavity searches. We are not talking about—

The Court: All right, then you mean the child has to strip down, but there is no cavity searches?

The Witness: Right.

• • •

[240] Q. How does one enter the building into Spofford? Is there a security control monitor at the front?

A. Yes.

Q. Within the rules in part 180 that were shown to you by the Attorney General earlier today, there is provision for imposition of room confinement on inmates at Spofford, is that correct?

A. Yes.

Q. Is that the same room confinement provision that another court in this courthouse designated as solitary confinement, if you know, in the *Pena* [case] against [the] New York State Division for Youth case?

A. I'm not familiar with the other case and I [241] can't make the comparison. Room confinement is carefully controlled. Considering that the facility is designed to be a secure facility, I think there is actually very little formal room confinement.

Q. It is true, is it not, that a high percentage of the inmates at Spofford are already convicted juvenile delinquents?

A. I don't know how you define high percentage.

Q. 40 percent?

A. It sounds possible. Maybe out of 180 children in care, 40 or so, perhaps as many as 50 might be placed with the Division already.

• • •

[244] Q. You were asked earlier on direct examination information concerning the National Counsel on Crime and Delinquency's 10 percent figure. That 10 percent figure is actually the maximum number of appropriate detention[s] [ ] rather than an appropriate number, isn't that right?

A. No. I don't think there is any maximum to it. I think it is something that most people, most states, [245] most jurisdictions do more than that and they were looking and saying, you know, where we have seen it working well, it was working around 10 percent and that should be the number you strive for.

Q. Now, in fact, the NCCD statistic reflects children up to 18, isn't that right?

A. I don't know that.

Q. Well, do you know how many states in the United States limit jurisdiction to juvenile delinquents to 16?

A. Five, I believe.

Q. Of which New York is one?

A. Yes.

Q. You mentioned Los Angeles County and they are a fairly high detention facility. Do you know if California limits jurisdiction to 16 as does New York?

A. California breaks theirs up into several different categories. They have, for example, one age group that goes to 23.

Q. And are 16 and 17 year-olds in Los Angeles County held in the juvenile detention facility?

A. I believe so, yes.

Q. Now, in New York State 16 and 17 year-olds brought before the Court on criminal charges, are they [246] held in juvenile facilities?

A. No.

• • •

[248] Q. Let's move to some of those considerations for what we could call screening. Is that the term used in determining who is eligible for nonsecure detention?

A. Yes.

Q. What are some of the factors that go into that decision?

A. It is a variety of factors. The charge, prior history, juvenile justice record, whatever the charges, the family situation, the peer group situation, the emotional level of the child, his impulsiveness, susceptibility, internal, external control. It is not made on any one factor.

We have in any category, kids who are detained and kids who are released. It is a combination or amalgam of

factors or number of factors that come together as opposed to any one factor.

> The Court: We are now talking about, I gather, you are now talking about people in charge of the centers. [249] How do they make a determination about the child's emotional problems?
>
> The Witness: Basically in an observation, when they see them, coupled with some consideration of that in his record. There are certain children who are constantly in trouble with other kids. That's a different kind of thing than a child who is constantly in trouble alone.

• • •

Q. In fact some children are automatically not considered for nonsecure detention simply based on the charge [in] their case in court, right?

A. There is a level of heinous crime that would certainly knock the nonsecure decision, sway it radically.

• • •

[256] Q. Returning to the potential harmful effects of secure detention at page 21 of Petitioners' Exhibit 36 for identification. • • • You wrote or the report states that, "There are other potentially harmful effects of secure detention. There is the potential of contamination of the less sophisticated by those more sophisticated in crime. Potential exposure to violence in detention facilities is [257] present, assaults, suicides and rapes in detention facilities have been documented by various authorities". Do you subscribe to that statement?

A. I'd like to point out as I did before that the range of population in the facility has changed significantly and that we are not talking about going from truants to murderers in secure centers any more. I can tell you that incidents do happen in secure detention facilities and I can also tell you that they are not common. So to that extent I subscribe to that statement. The situation has changed radically since that document had been written because of the de-institutionalization of the status offenders.

Q. In Petitioners' Exhibit 37 in evidence, Division for Youth broke down the charges, the highest charge against an accused delinquent which resulted in detention and those charges included trespass and burglary and prostitution, promoting gambling, unauthorized use of a vehicle resulted in a total of 47.2 percent of the detention population.

Now, accused murderers are kept in Spofford, isn't that right?

A. At this point, yes.

Q. Convicted murderers?

[258] A. To some minor degree, yes.

Q. So to the extent that we are dealing with a child charged with a very minor offense, would you ascribe to this statement in your report in 1977?

A. Factually it is still true, but the range of population that made it important in '77 is not there any more.

The Court: What does that mean, Mr. Bigley? In view of your answer to Mr. Guggenheim's question, what does that mean?

The Witness: In 1977 we were dealing with a JD population mixed with a status offender population so we had the potential for having anything

from murderers to truants in the same place. We don't have that possibility any more.

The Court: I thought you indicated that there was a possibility of juvenile delinquents accused of lesser crimes and convicted murderers being together at Spofford? I thought you said that was possible?

The Witness: That is possible right now, but I don't think that that range of problems or range of charges is as important in terms of the harmful effect of detention as it was when the range included the whole bottom half of the spectrum with the status offenders.

• • •

[260] Q. You would agree, would you not, with the proposition that the detention of a juvenile who was ultimately placed into the community—withdrawn. Among the negative effects of detention found in the 1977 study, Petitioners' Exhibit 36, was the alienation factor caused by the detention of a juvenile which is contradictory to the ideal goal of a community placement, is that a statement with which you subscribe?

A. Could you repeat the statement. I'm not sure I understand.

Q. That the alienation factor in the detention is contradictory to the ultimate goal, the ideal of a community placement?

A. I would say to the extent we are committed to the least restrictive environment, that we don't want to securely detain children who are going to end up in foster care or group homes in the community. Frequently the

situation changes during the course of the detention or during the course of the court trial. I don't know how you could predict their placement at the point of arrest or the point of taking them into custody or the [261] point of a 739 proceeding.

Q. I appreciate you don't know how to predict that and I don't either. I am not asking you how one does that. But to the extent that the ultimate placement is with the home or in the foster home, would you regard the detention as possibly or even probably unwise?

A. I would say possibly. I would not say probably.

• • •

[265] Q. Now, one of the bases for admission to detention is the prediction that if the juvenile were not detained he or she would commit a crime before the case were heard in Court. Right?

A. Right.

Q. In your report in 1977, you indicate that essentially the studies show that within the limits of current knowledge it is not known what factors predict probable nonappearance at court or future crime commission on a valid empirical basis. Is that a position that you still hold today?

• • •

[267] A. I would answer that by saying that quantitatively, statistically, I cannot predict what anybody is going to do at any level. However, I think we can assess a serious risk that some other kind of behavior will happen based on a number of factors and the amalgam of those factors that--including past behavior, current community

situation, personality, mood, any of those things as we see right in front of us at the time of assessment.

The Court: I understand everything but what do you mean by "current community situation"? That I don't understand.

The Witness: The relationship that the youth has with his family, with his peer group, with his school, with his work situation, all these things can give us an indication of stability in the community of the kind of support the child is likely to receive in terms of not [268] committing another crime.

• • •

Q. Returning to your report at page 14, you wrote that section 739 establishes a policy of preventative detention for juveniles. Then at page 15 you wrote that once a policy of preventative detention is accepted, the [269] problem of determining who will commit another crime during the court process remains. Is that a proposition you agree with?

A. That's still a problem, yes.

• • •

[275] Q. Now, you used a figure for arrests, 93 plus thousand, is that right?

A. Yes. 93,184.

Q. Where are those figures taken from?

A. That was a report from DCJS on 1978 juvenile arrests.

Q. Are all those cases processed in court ultimately?

A. I don't know that.

Q. Do those figures include arrests by police which are resolved at the precinct house, for example?

A. I don't know that. I would assume, but I don't know that.

Q. Assuming they are and assuming that it also includes the cases which come to court and are adjusted, the percentage of delinquents held in detention would be [276] much higher than the figure that you already gave in your testimony, relative to the cases which are processed in the court, right?

A. The numbers would change but your statistics would be invalid.

We reach a point where you start to say, well, you are doing something wrong because you are detaining a lot and what you don't know is that what you are doing is having these great diversion programs and these great adjustment programs and probation intake is doing great and so relative to the petition rate or the number of cases that go to disposition, you detain a lot.

The broader the criteria for base numbers, like the number of arrests, the more reliable your statistics are. Every time you come up from there, you start to penalize an area for having a good diversion program or a liberal sense of who to charge and who not to charge after arrest. That's why we deal with such large numbers.

Ideally we do it on percentage of youth population.

• • •

[277] Q. Now, you found in your report in 1977 at page 99 that a higher percentage of judges than other professionals saw the purpose of secure detention as protection of the community. Is that right?

A. I don't have a copy of the report in front of me. It is possible.

Q. Let me show it to you and ask you if it is the position you still hold.

A. I don't know if the judges are still at the top of that category.

Q. But they were then?

A. Based on the information we received.

> The Court: You mean they changed in two years or three years?
>
> The Witness: I think that a lot of agencies that work with kids have taken a more conservative attitude in the last two or three years. I am thinking perhaps especially of the police, at this point [who] may [278] outrank the judges in terms of importance of community protection.

Q. I know we have gone over this but I do want to ask you one more question about predictability that comes from your report and ask you if you still hold this position today.

You say that in essence at the bottom of page 94 of your report, in essence, the serious risk criteria establishes a policy of preventative detention for juveniles. It amounts to a deprivation of liberty on the chance that future behavior will be delinquent before the facts on the current delinquency are in.

Is that a position you still hold today?

A. I think that's the situation we find ourselves in, yes. But I think that the criteria are still, are useful despite that.

• • •

[280] Q. Now, we have had some testimony concerning nonsecure detention. What are the total number of beds in New York City available for—

A. In nonsecure? 56 beds.

The Court: In the whole New York State?

[281] The Witness: No, in New York City.

Q. Would you say they are about 60 percent utilized?

A. I can't speak for today. I would say the average utilization is probably 60 percent. Although I know they were almost full within the last month.

Q. So that on the average 33 or 35 beds are used?

A. 36, 33, 40, 30, sure.

* * *

[285] Q. Do you know what group confinement is?

A. Yes.

Q. What is it?

A. It is the isolation of a group from the regular program.

Q. Is that ever performed in any of the detention facilities around the State?

A. It is a possibility.

Q. Is it punishment of an entire group?

A. I wouldn't use the word punishment, but it is of an entire group.

Q. Are inmates ever handcuffed in the detention facilities.

A. Inmates should only be handcuffed for transportation reasons. If it is happening beyond that, it is not something that we are aware of.

[294] *Redirect Examination by Ms. Gordon:*

• • •

Q. You were asked on cross-examination whether you felt that there were some possible or potential effects to detention and/or to secure detention.

Briefly, because it is getting late, do you have a view as to whether or not there are any potentially positive effects from detention, either secure or nonsecure?

A. Potentially, certainly. The impact of being addressed by the system and what that means in terms of [295] what you are going to do next, the idea of what you may learn there about the system and that it is going to impact you makes a difference, not to mention the effects of the community, of the community protection issue. You are dealing with kids who may be doing a lot of harm in the community.

• • •

Q. It is a mandate in this state, is it not, that you are responsible for enforcing that the least [296] restrictive alternative be found for a juvenile who is detained.

A. Yes.

• • •

Q. Is it consistent or inconsistent with the policy of this state to hold a juvenile in detention merely to give him impact, shall we say?

A. That would be inconsistent in terms of the overall policy. I think we have to differentiate between what gets the child into detention from what we want to do with the child when they get there.

A child shouldn't go to detention for treatment, punishment, impact, to teach him a lesson or [297] any of those

reasons. A child should go to detention for community protection issues before he goes to court. However, when we have a child in care, we have a variety of things—we have recreation programs, adult to child contact, which has been defined just that way as treatment, any significant contact between kids and adults. Hopefully positive.

This is why the potential for harm in a detention facility is equally balanced by the potential for good because there will be contact there and there will be impact there just for those reasons. But it is not why they get there. It is what happens when they are there. That's different than why they get there.

Q. In the course of your cross-examination you were asked whether or not there were bars on the windows of Spofford.

I want to ask you whether or not any other secure detention facilities in this state has bars on its windows?

A. Not to my knowledge.

Q. Do you know why Spofford has bars on its windows?

A. Yes. In August of 1978 when the juvenile offender legislation was passed and they had to open [298] Riker's Island to put the juveniles in there, it was because Spofford was deemed not secure for the violent charges. Even those kids as JDs had been there before. There had been 130 escapes a year from Spofford and, considering the impact of the violent crimes, the juvenile offender crimes, they felt a more secure facility was necessary. But Spofford was geared up or was to be geared up. Riker's was always a temporary solution.

• • •

[299] Q. Is it also a matter of policy that the—the State policy that the nonsecure detention alternative is an alternative to be considered no matter what the crime [300] or criminal act the JD is charged with?

A. Yes.

Q. In other words, there is no set of criminal acts, juvenile offenders, designated felons, then, for that reason, that are precluded from the nonsecure detention alternative?

A. No. Any of the charges are eligible for any kind of detention. We have had juvenile offenders in foster care detention programs upstate as an example.

Q. You made several comments with respect to the serious risk of another crime criteria in the course of your cross-examination.

I would just like to know from you whether or not you have given any consideration to a further elaboration of criteria under that serious risk standard and if you have given some consideration, what was the substance of it?

• • •

[301] A. Yes. We have given that regular attention over the last two years.

Q. In what context do you give it consideration? Is it regulatory or how would you come to consider that as the director of detention?

[302] A. Both. In a regulatory [context] because in March of 79 we last filed our "Regs" and we are already doing revision on them in another filing. And in the context of that, we have done it for regulations. In addition we have been publishing on a more or less regular basis

guidelines and advice, if you consider it that, from a technical assistance agency for detention facilities on what they should be looking at.

The problem we have been having in that trying to develop these guidelines all we have ever managed to do is to change the kinds of words that need to be defined[. A]s hard as it is to determine serious risk in a quantitative way[, i]t is equally hard to determine any other factor that we have been able to substitute. To embellish the serious risk criteria with a listing ends up with a rigid list that gives us either no option in terms of letting kids go when we don't think they need to be securely detained, and we end up detaining more than we need to or not to detain kids who we think need to be detained because the list doesn't add up to the right number of boxes.

We have been, I feel, very successful with the admittedly subjective kinds of assessments that are currently being done, to wit, our low percentages.

[303] The alternatives that we come up just haven't been worth publishing or putting out. We have done the guidelines sheet which I have here and which will be [out] by the end of March a policy change for us. It is an embellished list, but its embellishment is its increased concentration on not detaining and detaining nonsecurely and not really on trying to determine how you can define serious risk.

• • •

Testimony of Leslie T. Wilkins
(Excerpts)

[306] LESLIE T. WILKINS called as a witness by Petitioners, was duly sworn and testified as follows:

Direct Examination by Mr. Guggenheim:

* * *

[307] Q. Professor Wilkins, by whom are you employed?

A. Temporarily, I am visiting professor at the Simon Fraser University in British Columbia but my permanent appointment is with the State University of New York at Albany. At Simon Fraser my position is that of professor of criminology, visiting professor of criminology, and at the State University of New York, professor of criminal justice. The school at Albany is of course a graduate school.

Q. How long have you been at the school of criminal justice?

A. I believe 1979, I think it was 1979, yes, it was.

* * *

Q. Before that your regular appointment [at SUNY/Albany]?

A. Prior to that I was at the University of California, Berkeley, for four years and for some part of that time, dean of the school of criminology.

[308] Q. At the Albany school of criminal justice, 1979?

A. 1969.

Q. So that you were there for 10 years?

A. Yes.

Q. And then you were at Berkeley—

A. Previous to that from about 64 to—no, 66 to 69.

Q. Have you recently participated or engaged in any research projects?

A. That seems to be my continuous activity of one kind or another.

At the moment I have two contracts from the Institute of Justice, the research body of the Department of Justice. One of which is the writing up of the history of the guidelines developments for which, I suppose, I must take a certain amount of blame, and the other one is in connection with sentencing more from the exploration of aggravating[-]mitigating factors[. S]eeing whether it is possible, perhaps, to quantify the idea of culpability, perhaps similarly [ ] [to] the ways we have worked with the concept of seriousness in relation to crime.

The guidelines of the federal parole board, of course, were developed by myself and my team and I have had some contracts from the Ford Foundation, research [309] grants from the Ford Foundation. I am currently consultant to the United Nations in relation to the forthcoming Congress on crime prevention to be held later this year.

Q. Have you received any honors or awards in your career?

A. Perhaps I should mention two of them. Yes, I'm afraid so. I seem to have accumulated a lot of paper on the wall.

The one I am proudest of is the one from the British Royal Statistical Society. I liked it then because it was a money prize. It is a very old established society and that

was in relation to the First Epidemiologic Study of Deafness and that was before I became really too closely involved with the criminal field.

The Sutherland Award for distinguished research of the American Criminological Research Study in 1972. There are a few others.

Q. Have you been honored in your university role?

A. Distinguished—I forget the exact title, distinguished teaching award or something like that. Outstanding Educator.

Q. Have you held any editorial positions?

[310] A. Quite a number. I still hold two. I'm on the editorial staff of the Journal of Criminal Law and Criminology. That's the Chicago journal, and the Journal of Research in Crime and Delinquency and also the Georgia Journal of Criminal Justice.

The Court: Am I correct that your own educational background is chiefly in England, is that correct?

The Witness: It was indeed, sir.

• • •

Q. Did you obtain any degrees or certifications?

A. I am a fellow of the Royal Society by certificate and also a fellow of the Association of the Incorporated Statisticians.

In the United Kingdom degrees in those kind of subjects, the higher degrees, were not granted at that [311] time and, indeed, as you perhaps know, your Honor, surgeons in England insist on being called mister which is regarded as a superior to that of being called doctor and so, I regret, that I am still a mister, in that respect but a fellow in those two societies.

> The Court: When did you start * * * a concentration on penology?
>
> The Witness: In 1953[. M]y first piece of research in this field was in collaboration with Professor Herman Mannheim.

* * *

Q. Have you published any major books?

A. Yes. My first one in this field was [ ] Prediction Methods in Relation to Borstal Training which was carried out in 1953 and published by Her Majesty's Stationers in 1955. That was a statistical analysis, or research study, perhaps. Then a theoretical work, Social Deviance, in 1965, Evaluation of Penal Measures, which is a methodological text, and quite recently a piece on bail, but that was done in relation to the Australian legal system when I was attached to the Institute of Criminology in Canberra recently on sabbatical.

[312] Q. Could you indicate to the Court any relevant articles that you may have written relating to criminology or prediction?

* * *

A. Yes, I can't recall the title. I seem to always be writing on the subject of prediction. It was my first study in this field, and I have tried to get away from it from time to time in order to diversify my interest.

A lot of the work is reprinted in various texts. Well, I began of course with Prediction Methods in Relation to Borstal Training. We started with approved schools which was a younger age group using the same methodology, and prediction has of course been a tool in a very large number of research studies, not directly focused as such, but one of the tools that one had to use, of course, in the guidelines for the United States Parole Commission.

Q. Let me show you this document [Petitioners' Exhibit 40 for identification] and ask you if you recognize it?

A. Yes, I do. It is my curriculum or resume.

• • •

[313] Mr. Guggenheim: At this time petitioners move that the witness be recognized as an expert.

The Court: In what?

Mr. Guggenheim: In criminology and prediction of behavior and statistics.

• • •

The Court: All right.

• • •

[314] Q. Professor Wilkins, have you read Petitioners' Exhibits 1 to 28-A in evidence?

A. Yes, I have.

Q. Do you have an opinion respecting the accuracy of prediction in those documents of future behavior?

A. I would say that the accuracy of the predictions would be minimal. There are roughly three levels at which prediction can be carried out and these would fall into the lowest level of expected precision.

The difficulty [ ] with subjective assessment of this kind [is] that there is not even a check list of the information which is used so that it is not even subjectively systematic.

I would characterize the order that has been found of efficiency of prediction to be the actuarial method, which has always been superior or certainly never inferior to clinical.

Q. Could you explain the distinction between actuarial method and clinical method?

A. By clinical I would assume a somewhat systematic and ordered subjective assessment of data and by actuarial I mean of course where the data are standardized, weighted and subject to the rigors of contemporary decision theory and statistical analysis, [315] and comparisons have consistently shown that the actuarial approach in terms of the number of right predictions is superior to prognosis of clinical order. Of course the clinical being systematic is, again, in order of difference from the, shall I say, wide open subjective.

The difficulty with the exhibits is that one really does not know what information the decision maker has even used, let alone know what weight is attached to it.

> The Court: • • • Differentiate so that I will be able to understand what would one do if one made a clinical approach and what one would do if they made an actuarial approach.

A child comes in, as you know, has committed a crime and is examined and based on various, whatever, I don't know whatever the information is, a decision is made that he probably will commit another crime so that [316] therefore he is detained.

Now, how would one do that if one used the actuarial approach and how does one use the clinical approach?

The Witness: Your Honor, a subjective assessment relies on the individual skills and experience of the individual making those assessments. Whereas with a statistical approach, you are combining the expertise of a very large number. You base your assessment on a sample which is followed up in time and which is irreplicable by other people because specific weights are given to specific items. You know exactly what those items of information are and whereas even in the clinical you still really don't know whether the person is using information that he shouldn't use. When I say shouldn't, I mean either in terms of efficiency or perhaps in morality. Whereas with the actuarial at least you know that the individual is not using information that he shouldn't use.

The Court: You are using subjective and clinical interchangeably?

The Witness: Clinical is somewhat subjective. But it can be systematically subjective.

The Court: That would make it clinical?

[317] The Witness: That would make it one grade above the subjective as such. Indeed I have

no objection, your Honor, to the use of subjective data, except that we have found it wanting in the studies we have done.

If I may give one example. The subjective decicision maker and even perhaps the clinical sometimes are inclined to assume that behavior or characteristics that annoy them personally are going to—well, things they dislike even, are also therefore prognostic of bad behavior.

In fact we did a study once some years ago when I was at Berkeley looking over parole and probation reports, mainly probation officer reports, to try to find the words which would most likely result in the individual losing his liberty. That word, the most killing word, if I can use the term, was "uncooperative". Now what precisely does that really mean? That is my question.

Obviously we might like to reward a person who is cooperative, maybe that's right, but I can say it isn't predictive. In a sense I say it is not right to reward cooperation or uncooperativeness but I am saying if it isn't predictive, then it shouldn't be claimed that it is predictive and used as though it is such. That is [318] in fact what is inclined very much to happen.

Q. Are there other examples of elements that may be taken into account in subjective evaluations?

A. Yes, I'm afraid there are quite alarming evidence at times.

Governors or wardens of institutions in general are inclined to believe that the person who is a troublemaker in the institution is usually a quotation mark, in other words, it means somebody who hasn't gotten on very well; is a person who is not going to succeed. There is no correlation between behavior in the institution and subsequent behavior on the streets.

The really efficient criminal knows how to behave in the institution and that perhaps wipes out that effect.

Nevertheless, in the subjective assessment, I am quite sure, indeed in the Borstal study, we have evidence of this [. G]overnors tended to overweight the behavior in the institution such that they spoiled their predictions that they could have made if they had been totally unaware of that fact. If I remove that data item from them they would have done better than they in fact did.

This is the difficulty. We don't know whether [319] the clinical—well, sometimes we know the clinical because there are sometimes standard instruments. But we still don't have the degree of control and matching that we have if we transform that to the next level of actuarial, if one is really going to make predictive statements and not statements of value.

We have sometimes found that race has appeared as a prediction. Sometimes it has been possible to suggest that that is a data item which is a surrogate for other features of society, like unemployment and the other disadvantages that minority groups suffer. If we replace that data, we can sometimes show that maybe race was not—there are other occasions when it has been very persistent.

If you are dealing with an actuarial approach and if race is in fact being weighted, you know that it is. If you know that it is, you can cut it out if you don't want it there. I would suggest that data items over which the individual has no personal control may well be regarded as immoral to use. And with a statistical system, that is under control. With a subjective system it is not under control, and we know precisely, of course, how many false positives, how many incorrect predictions we make when we are working to an [320] actuarial model.

Q. • • • Do you have an opinion concerning the probability of the predictions made in petitioners' exhibits [ ] being right?

A. Well, there is really no handle that one can get on that kind of data. Clearly it must be less efficient than actuarial because even where strict comparisons have been made with clinical and actuarial, and there have been scientific studies of that, the actuarial has been superior and these are considerably inferior to that.

Furthermore, the prognosis that one can make can never be better than the information on which it is based, and we were able to get certain levels of prediction where each indication with people who are trained to do that and nothing else took half a day. We have standard experience on building the first stage of [321] actuarial tables from the input, the data scan operation. I cannot get more than two cases a day out of my workers. That is because we don't drive them. That's it. And even with that level of input, we get false positives of 8 to 1, 10 to 1; for every one right, you will get 10 wrong.

Q. Can you explain the term false positives?

• • •

A. He has the profile which fits the kind of people who'll fail, but he doesn't. You cannot discriminate the profile of the failures from the successes in that group. So you are working to the profile of the individual and hence you will classify this individual as a likely failure and that's all you can do, and the true failures among those who have that constellation of characteristics depends on how frequent the event you are looking for is.

If you have a population that I divided up roughly 50-50 in reality, then prediction is very much more efficient than in the number you are looking for. We usually prefer the base rate, which is smaller and as the base rate goes smaller and smaller, so you are more [322] and more likely to make a wrong false positive decision about by, as it were, being [ ] excessively risk aversive.

Q. The [ ] base [rate] term that you used, could you clarify that a little more. What does it relate to in the group?

A. Well, the actual percentage that fits into the category with which you are concerned[. I]n the Borstal study we were extremely fortunate, and one of the reasons that the prediction there was pretty good was not only my skill but it was the fact of luck that—well, with this particular population about 55 percent committed more crimes, in other words, we were getting to that 50-50 point where statistical methods are the most powerful.

Now, as that rate drops, the likelihood, for example, of a person who has committed a violent crime, committing another violent crime in a given interval of time that probability really begins to get very, very small. So as you subdivide the groups or as you truncate time, so the percentage

in the category you are looking for diminishes until you get to the proverbial needle in the haystack which not even statisticians can find.

Q. Now, if you made a prediction about an individual that he would do something and he in fact did [323] that, what would he be known as?

A. That would be a true case, true positive. If the prediction is correct, that's okay. If he fits the profile and doesn't behave according to the profile, that's a false positive.

Q. Now, assume that the predictions in petitioners' exhibits that you have read were based on recommendations made by an individual who interviewed with the juvenile and other parties, other persons, in an interview that took from 10 to 40 minutes and in that interview the interviewer may have asked questions about the particular act that brought the juvenile to court and may have asked questions about the child's school record, parental opinion of the child and also determined the child's prior record in Court, if any, and based on that interview process recommended to the Court in the exhibits that you have read that the child be detained because of a belief that he or she would commit a crime, do you have an opinion concerning the probability of that prediction being correct?

A. I would be surprised if it was any better than just chance, surprised.

My experience only relates to much more sophisticated data analysis. Using similar subjective [324] methods but where the assessors have lived with the youth in institutions and small institutions, generally less than about 100,

for nine months before making the subjective prognosis about further crime and in those cases they were only 4 percent better than chance.

For the record, I believe the correlation was about .15 and that means about 4 to 5 percent better than chance in that case, which is pretty poor even where these methods are used and the individuals have been in the same environment as well as all the records that are available.

So if you ask me to guess, maybe 1 percent better than chance would be the maximum I would expect.

• • •

[325] Q. • • • [D]o we know, by the way, the base rate for the adolescent population in New York State for the commission of crime?

A. Well, it would be many, depending upon how that is cut. I could make an estimate if I could define precisely what one means in terms of age and are we counting convictions and arrests. There is a big difference between conviction and arrest. What constitutes the word crime? Adjudication or whatever? I would be able to make a guess on one of those for a particular age range or something like that.

[326] Q. Let's say an age range of persons 10 to 16 years who have or who are likely to have actually committed, to have been proven to have committed any crime in the penal law?

• • •

A. Well, found guilty of a crime in the population, adjudicated is this? The difficulty, when you say what is the level of crime, there are so many definitions that you can use. If you take self-report of crime, you get merely 99

percent of people having admitted to committing a crime. When you take victim studies, when you survey victims, you get 4 and 5 times in some categories and less with others. Such as in the F.B.I. data you can get another figure. With arrests you get another figure and it is a statistician's nightmare apart from anybody else in trying to make sense out of the way it is charted up.

I'm not sure what you are really trying to get at.

[327] Q. I am limiting the question to a situation where a person will actually be convicted of committing a crime but who may not necessarily have committed any crime at this point.

A. In the population.

Q. And what the [ ] base [rate] would be for persons 10 to 1[6], if you know? Or if you could guess.

A. There have been studies for this kind of thing and I really couldn't catch that figure reasonably at the moment. I would rather not. But it would be pretty small, really quite small.

I think in the course of a long period of years, I remember seeing a figure that up to the age of 17 or 18 there is about a 10 percent chance over a whole long period of years.

Q. When you say pretty small earlier in your answer, you mean smaller than 10 percent?

A. As you begin to chop time dawn, so that is going to get smaller and smaller.

Q. Let's assume a [ ] base [rate] of 10 percent of crime in the population, commission of crime over a one-year period. When you said that there was at that time at best a one percent greater probability of chance that the

prediction in the exhibits would be correct, [328] could you interpret what that would mean in terms of false positives and true positives in the detention figures?

Out of 100 children who would be detained based on a prediction that they would commit a crime and how many in fact would commit a crime if they were not detained?

A. Well, actually the best thing under those cases would probably be to use the base rate and not to attempt prediction at all. Because where the base rate is very small, you do better by saying everybody is like the majority than you can do by carrying out any tests.

For example, first offenders, the various recidivism rates are known but let's suppose I take 20 percent charts of recidivism of a first offender and not true of all age groups and categories. Then the best assumption is to say that these people will not commit any crimes because it is very difficult to improve on the 20-80 that you have devised from the base rate.

So you have got, if you use the base rate and say everybody will be a success, you are only 20 percent wrong which isn't too bad for starters and then you have got to improve on that before you are beginning to make any headway with statistics at all.

[329] So where the base rate is very small, then the safest actuarial bet is to play the base rate rather than to try to improve it. Because it is extremely difficult to improve on that kind of estimation.

Q. But where the person making the guess or prediction takes the other side, what would be the situation with respect to those persons detained? What would be the probability of false positives to true positives?

A. It is difficult to generalize the case. I can only indicate that if one is looking for quite serious crimes, crimes of violence and so on, one does a lot worse than predicting the likelihood of other kinds of crimes. That with violence, violent offenders, the best piece of work so far was a very big study paid for by the national institute of mental health, I think, by Wenck and Emrich, and their best estimate of individuals [ ] followed up over at least two years was to get false positives of about 8 or 9 to 1. That was the best that could be done where the efficiency was 50 percent. Unfortunately this gets somewhat technical but if I am going to be truthful, I also have to be technical, unfortunately, here.

There are three figures to consider. What [330] percentage of the target population of the violence potential do I want to get? If I insist, for example, I must lock up everybody who is potentially violent, then I will lock up everybody. There is just no other way about it.

So as soon as I come off that, I must lock up 100 percent of those who are going to commit a violent crime, then I am entering into a trade off.

Now, supposing I even go to the point where I say I am willing to settle for getting 50 percent of those who will become violent. That's giving away a fair amount. I am giving that amount away because that brings me to the most efficient statistical measure. Then I will have 7 false positives to every right. In other words, I will have to lock up 8 to get one potentially violent individual and where those data are based on two years interval of time.

Now, if I start collapsing that interval of time, that false positive is going to increase very rapidly and if I

want to go beyond my 50 percent and get more, then my false positives are going to increase or to escalate at a tremendous rate until, of course, obviously I reach 100 percent who have to be incarcerated if I am going to insure that I get 100 percent people who will [331] commit violent acts.

So best one can see at the moment from the best methods possibility would be no better than 7 or 8 to 1. That's the best. I am not talking about those exhibits. Those are so unsystematic and, your Honor, I agree with your point. I can find no system so therefore I cannot really discuss them. It is beyond me to appreciate this at all from the scientific point of view.

Q. Let's assume that, again, we are assuming that the [ ] base [rate] for commission of a crime for the population involved in this case is 10 percent. If the length of detention were for 3 or 6 days, the period of time within which the person would be likely to commit a crime prior to trial, what opinion do you have concerning the likelihood of that actually being committed?

A. I can only address what I know from the data and one of the things that have shown up robustly of course in all countries and not only in the United States for which data is available, it is the consistent finding that the peak for reconviction, for recidivism is about 3 to 6 months after a release from an institution. I know a release from an institution is a different kind of issue, but in cases where probation has been awarded and probation without any incarceration at all, the person is [332] at risk of committing another crime the whole time from the day he leaves the Court, he is at risk and it is this exposure to risk that is of course, again, the data we worked with.

Similarly, there is a depression in the curve. It rises quite rapidly to about three months and then begins to fall off until about three years after that time, and the person is hardly more likely to commit another one than most of us have committed our first. The probability has fallen right down.

The majority of people who will ever commit another crime who have committed one and are likely to commit another will do so within three to four years.

Peak for returning would be between about 3 months to 6 or 9 months.

The Court: I think, professor, I would feel that the analogy seems to me to be flawed. In the first instance, as you understood in your example, the man had been incarcerated and spent time in prison. Secondly, he has been adjudicated guilty.

We are dealing now with people who have not been adjudicated. They had been caught as it were and had been turned over to authorities. They have not yet been adjudicated guilty and I'm not—well, I would [333] appreciate any analogy between that kind of situation and the ones where nobody has been told that he is guilty yet. He is at risk, as you use the term. But he hasn't had the imprint of the system as he had in the other two cases, which might be a deterrent.

The Witness: I agree, your Honor, that there is a possibility that we haven't explored the accused, not guilty, mainly because it is difficult to get data on that.

• • •

The Witness: May I say, your Honor, that one has found such similar patterns of behavior where the intervention of the court or the intrusiveness of the action has varied so much and still one finds it much in the same shape that I would think that perhaps one would reasonably infer that it might be. I cannot say yes, I know it to be so but I would say it is a reasonable inference.

[334] Q. • • • In the studies that you have performed and are familiar with, is there a tendency to overpredict or underpredict the commission of a particular behavior?

A. Well, to always overpredict. There are two reasons. One is the base rate. If I may refer to one example here. There was 86 percent error [ ] rate among predictions to failure and 5 percent error rate among predictions of success and that's the Wenck's study which I referred to earlier. In another study, Kozal, et al., 63 percent error among predictions of failure and 8.6 among predictions of success.

Now the Wenck study is violence again and the Kozal study was more general and we have that similar finding. The interesting thing is that most laymen assume that to have committed an offense against the person is liable to be prognostic of committing another crime. In fact it isn't. It tends to be the other way around and this, again, is one of the reasons why uncontrolled subjective data—we don't know what people believe to be so and it may not be so.

[335] Q. Are there any other reasons for the tendency to overpredict?

A. In general, yes indeed.

In the system we have, the nature of the information itself reinforces a risk of aversive—I could use the word conservative, but perhaps that would be inappropriate. An avoidance of risk.

• • •

A. Because decision makers normally take more punishment for their wrong decisions than they get rewards for their right ones, but in the particular case—in these kinds of decisions, you only get information back to you where you have made a risk accepting decision which was wrong.

You never get information back to you where you make a risk aversive decision that was wrong, because if you say, for example, "we believe this person to be a bad risk, we will not parole him," he is not then exposed to risk and you then have no knowledge that he would perhaps have been a success. That information never gets back to you and, of course, you can also—and this is useful if the decision-maker takes that view—say, "Well, the fact that he didn't fail is because I didn't grant him parole."

[336] So it's a self fulfilling prophesy which reinforces a risk aversive behavior because the rewards are not—the rewards to the decision-maker are not distributed equally between those two kinds of errors, nor is the information.

• • •

Q. What was the age population of the approved school?

A. It was 12 to 15. I am tacking on the next age [337] group back from Borstal.

Q. Could you explain to the Court that study, the approved school study?

A. We applied exactly the same method, your Honor, as we did with the Borstal study, but obtained a rather lower prediction.

We couldn't quite explain that, but it was still—it was still fairly reasonable, but it was a lower rate of prediction, despite the fact that the base rate was also optimal from a statistical point of view.

There was one or two disturbing findings there and I prefer not to assert an interpretation. However, when we had classified the approved school boys according to their possible risk of recidivism, we were then able to look at the kinds of institutions into which they had been placed and the institutions, of course, had their own recidivism rate. Some in the main got pretty bad boys and some in the main got fairly good boys.

The intriguing thing was that where by chance if you took a wrong decision, a good risk was put in an institution where the base rate was worse, the good risk emerged worse than we would have predicted.

Strangely enough, conversely, where a bad risk went to a good institution, they emerged somewhat better [338] than we would have predicted, but for the average institutions they came out exactly as predicted.

There are various explanations of that, some of which—it could be technical, it could be due to the fact that the methods are not powerful enough to discriminate, or on the other hand we could say that there is a lad on lad effect as well as a treatment on individual effect that the culture in which the individual is placed makes a difference. I would not—I cannot discriminate those two possible hypotheses, but the data were interesting to us.

Q. Do you have an opinion with respect to the ability to predict behavior in juveniles as distinguished from adults? Which is easier or more difficult?

A. The base rate for juveniles may be a bit higher and for that reason it should be easier, but in practice it does not seem to be so.

It seems to be the other way, perhaps because they are still more volatile, more—is volatile a good word? Mobile or whatever. They haven't got so set in their ways and are more or less predictable.

• • •

Q. Focusing your attention on the facts of this [339] case as they have been developed in the record, the Court has indicated the distinction between the nonoffender, the person only accused of committing an act, and perhaps the first offender or second offender who actually also could be involved in this case since they have come to court with an arrest, a previous conviction, perhaps.

Do you have an opinion with respect to the probability of a false prediction that a person with two previous convictions, brought to court on a third charge, is likely to commit a crime within the next four or five weeks of the arrest that brought him to court if released?

A. Well, the probability, given those data, are certainly higher than for a first offender and higher than for a second.

In fact, about the only thing which is predictive of subsequent recidivism is previous convictions. Previous other data are not very predictive.

That is the major element. The prior record is the major element in any prediction. But again, even where

that is taken into account—in fact, again referring back to the Wenck, * * *.

[340] They gave these lads the Minnesota Multiphasic Personality Inventory, which takes a lot more time to fill out than even to say. It is one of those enormous psychological tests that takes some hours or so to complete.

They gave them the California Personality Inventory and a number of others. Pretty well everything from the psychometrics available was given to these lads, but it added no information at all beyond that of previous convictions, and even then the false positive ratio was about 6 or 7 to 1.

* * *

Q. Seven people who would not commit the act for one who would?

A. Yes, unless one defined some very special subcategory of priors, some very special subcategory, a person with ten previous in the course of the last 10 weeks. If that was demonstrated, this would be a very rather interesting subcategory.

Q. The question I asked initially in this area of questioning had to do with the prediction that someone with two previous convictions would commit an act within a four or five week period.

[341] Could you give an opinion concerning the probability of false positives to true positives?

A. No. Not for that one subcategory alone.

I don't know what the average number of prior appearances is. In general, by two previous, the rate is then about twice one and by three priors you are then fairly high up the recidivism curve, but it's—none of these predictions so far would give us—even picking out the most restrictive

category, I am sure it would not give us more than 2 to 1, say, as a guess, an informed guess.

Q. 2 to 1—

A. Two false positives to one good one even with the most selective category.

Q. So when you said earlier that the best predictor or the best information upon which one can rely in making a prediction is previous record of conviction?

A. Yes.

Q. That would yield two incorrect—

A. That is an informed guess and I am having to make some quick mental calculations because various—a group of children with two previous is rather a rare example to find and I am trying to match that against older age groups. So it's an informed guess.

[342] Q. The 2 to 1 false positive to true positive guess is based on what period of time; what exposure of risk?

A. Oh, at least one year. To reduce that time I have no idea how that would behave, because I don't know whether with subcategories the same shape curve would hold, but it would certainly be much less.

Q. It would be less than 2 to 1, but you couldn't give an educated guess what a one month period of time would yield?

A. I don't know the shape of the curve for subsets.

Q. If we were dealing with one previous conviction and a one month period of time, would your answer be any different?

A. You would have to double it, approximately double the risk.

Generally it runs from zero to 1, to 2, to 3 doubling and then falling off at about the 75 or 80 percent recidivism rate.

Q. I don't mean to press you to give an answer if you can't, but if we dealt with a person never before convicted who comes to court, the prediction is made that that person is likely to commit a crime within the next [343] five weeks, is charged with an index crime in the FBI scheme a violent act, could you give an estimate of the probability of that act being committed?

A. With that kind of category, any actuarial estimate could not improve on the base rates. The probability, as you give the case, is so light, so low, so small that you would just play the base rates and, obviously, let him go.

You couldn't decide anything else because this is the needle in the hay stack problem, the probability is so small.

[344] Q. Do you have an opinion concerning the probability—accuracy of the prediction that a person brought before the Court for the first time, never before convicted, that is, would be likely to commit another crime within the next four or five week period?

A. It depends very much on what other data one has, but then given those kinds of data, the probability would normally be extremely small indeed.

Clearly if the individual is psychotic or something of that sort, then that would be a different matter, perhaps, if they were not in touch with reality, but the best thing to do with any of those—actuarially [345] the best thing to do with those small probabilities is to behave as if they were all successes. To improve upon that overall would be impossible.

The base rate would still be the best estimate. You can not improve on the base rate with such a small probability.

Anything you do to the base rate you will probably only be disturbing by moving A to B and B to A. Overall there would be no improvement.

You may improve it for one case and then change it back again in the next, but across the board, with a small probability, the base rate is the best bet overall.

If you wanted to make money on it, that's what you would do. You would play the base rate because over the long haul that would be the thing that would pay off.

In any one case you may be right or wrong, but taking a whole lot of decisions together you would be far better off to play the base rate and to bet that they would all be success[ful].

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[346] *Cross-examination by Ms. Gordon:*

• • •

Q. Doctor, I call your attention to the fact that this [State's Exhibit B1] is entitled "Detention Screening Form."

As you can see, doctor, it calls for the entry of some information on the first two pages and when you get over to the third page there is a rating scale of [347] certain factors which culminate in a recommendation to detention authorities.

Now, I ask you, doctor, is that the type of form that you were talking about before when you talked about the systemazation * * * of clinical judgment; is that the type of form that's used sometimes to systematize [ ] [clinical] judgment?

A. This could be either a byproduct of a clinical or it could in fact have been—looking at it, I can't say whether that was a statistical or a clinical. Those weights may have been imagined or they may have been derived from analysis, I don't know.

Q. Certainly, they could be empirical weights or intuitive weights, is that not correct?

A. Yes.

Q. That's not what I asked you. I asked you whether this was the type of form to assist in decision-making.

A. Yes.

• • •

[349] Q. Doctor, I would just like you to compare that for a moment with [State's Exhibit] B2, which is the form following, which as you can see on the first page also provides for the entry of some factual information and on the second page, the overpage, where it says, "Part 3, Recommendation", there is a blank with several lines for discursive writing.

A. Yes.

Q. I take it in terms of what you said before in your direct testimony, the absence of the weightings or specific criteria such as appeared on the prior form would lead you to conclude that this was essentially a subjective recommendation section without any particular guidelines?

A. It could be or it could be an amplification of the weighting system.

Q. Let's assume, doctor, it is not an amplification, it is a different form used in a different place.

A. This kind of form really—

• • •

Q. Would permit the kind of subjective judgment you were talking about?

A. I would call that unstructured subjective.

• • •

[350] Q. It is difficult, is it not, doctor, to determine with 100 percent accuracy what any given human being will do in the future, is it not?

A. A hundred percent is a subjective certainty.

Q. Do I infer from that, doctor, that it's impossible to determine with a hundred percent accuracy what any individual will do in the future?

A. Yes.

Q. That same impossibility is true of future criminal behavior as well as noncriminal behavior, is that right, doctor?

A. Of course, yes.

• • •

[351] Q. Is it possible to determine a given juvenile's potential for criminal behavior with let's say 50 percent accuracy?

A. Not for an individual because the individual is unique. All you can do is to say that this particular person fits this particular profile and that applies whether it's actuarial or clinical. Every individual has his own probability and can always prove you wrong when you make the prediction.

Q. In other words, once you have to make a decision about a given individual specifically, you never can be assured that you are making your judgment with any specific degree of accuracy, is that not correct?

A. Indeed that is so, yes, about the individual, but if we really behave that way we would never make any decision about anybody at all.

• • •

[352] Q. In the given factual situation of that individual in the future?

A. From the point of view of the scientist, he [353] chooses which—in order to do his sums which base to use.

Q. If you could determine the future criminal behavior of an individual with let's say 50 percent accuracy, that would necessarily mean that you would be • • • right about your projection half the time and wrong half the time, isn't that so?

A. Yes. Actually I find it difficult to discuss individuals because really decisions aren't made in relation to people. Decisions are made in relation to information. It's the evidence that is on trial, in a sense, rather than the person, isn't it?

If you would say given that I only know this piece of information, what would it be rational for me to do—that I find would be easier to respond to, so I am not dealing with people, I am dealing with information.

You get me into philosophical speculation if you suggest that the person is different from the information because I don't know how we know anything about people except in terms of information that is transmitted to us by them.

• • •

[354] Q. If you take aggregate observations, let's say in a study, and you say that the model that you have developed is accurate 50 percent of the time and you have

individuals with related profiles, is it not true that statements about those profiles or the information in it will likewise be accurate 50 percent of the time and in error 50 percent of the time?

A. Yes, which you could achieve by tossing [355] pennies.

Q. If you say in error versus accurate 50 percent of the time, that's the same as essentially saying that half of the group will consist of false positives and false negatives and the other half of the group will be, I think as you said before, positive positives, right?

A. Yes.

Q. Assuming that you had at your disposal the most precise and individualized predictive model of juvenile—potential juvenile criminal behavior available to you that you could find in the current state of the art, would you still agree with your statement in the Borstal study that ["]even if individual prediction were possible by either statistical or ideographic techniques it would be useless for administrative purposes in a free country since individual prediction involves either omniscience of future chance happenings in the lad's life, which is out of the question, or it involves complete control over his life, which if not impossible is at least politically undesirable["]?

• • •

[356] A. I'm not sure that's the chapter I wrote, but yes, I think I do by and large.

It seems to me that for the kinds of decisions that were being made at that time, and indeed now, [357] prediction alone is not enough. I suppose I had my own

really, to some extent, in the model which we developed for the United States Parole Board where prediction was a small element, but it didn't have to stand on those merits. It's largely the seriousness of the offense and the culpability of the offender and it just so happens that in the main those items which are predictive are, at least with adults, are also somewhat reprehensible.

I didn't want decisions made only on the basis of prediction at that time and I still would take that view.

Q. Do you mean by that that when an administrative agency [ ] implements laws or guidelines or when a legislature [ ] creates laws or guidelines relating to criminal justice [it] should take into account societal values or moral judgments about the nature of the behavior; is that what you mean by elements other than prediction?

A. Yes. Prediction merely gives you a number. It tells you what the risk is. It doesn't tell you about the distribution of that risk either.

You know, some people are poor gamblers and others are relatively rich gamblers and the strategies the poor gamblers can play are different from rich [358] gamblers, but they may still be playing the same probabilities.

So there are moral and ethical probabilities which have to be considered, particularly in terms of what assurance you want that you do not make an unacceptable decision.

I mean, as I say, if one is prepared to take the risk, then, of say locking up 20 for every one good one, you could perhaps have an impact on the rate of offending.

I can't tell you whether it is morally acceptable.

Q. In other words, the statistician may inform the administrator or the lawmaker about what the risk of error is?

A. Yes.

Q. The statistician does not inform the lawmaker or the decision-maker about what his value choice or moral choice should be?

A. Not in his role as an expert.

Q. Departing for the time being from the question of individuals and returning to the systematizing of information about individuals * * * once you begin to systematize [359] information, as a statistician you can, [ ] given appropriate study conditions, can you not, [ ] draw conclusions about the aggregate of the information, is that right?

A. And indeed of course subaggregates which become more useful.

Q. You can make generalizations, sometimes, and you can even establish relationships, can you not, between certain characteristics or variables and behaviors across the aggregate?

A. We can, yes.

Q. In fact, that's what statisticians do when they create models, do they not?

A. That's one of the things, yes.

Q. By the way, you can make these generalizations and relationships, again given appropriate study conditions, with respect to the behavioral characteristics of criminals or potential criminals, can you not?

A. Yes.

Q. How big does an aggregate or sample have to be before you can start making these generalizations or have confidence that the significance that you may find between variables and behaviors is an accurate reflection [360] of what's in fact going on?

A. Well, the sample size that is required is proportional to the difference that one is looking for so that a sample of, say, ten cases, and you find no particular differences in that group, and if it's a stratified or random—more depends on the method of selection than on sample size and sample size depends on the variability of the phenomena that you are investigating.

So if you have a highly variable phenomena you would require perhaps a larger sample size, but the size is not really relevant. Your inference depends on the—essentially on the method of drawing the sample in the first instance.

• • •

[361] Q. One definition of recidivism is arrest of a person who has been previously arrested, is that not true?

A. That's one definition.

• • •

Q. Recidivism rates for younger offenders are usually higher than recidivism rates for older offenders, is that not true?

A. It depends on really when they started rather [362] than their actual chronological age.

Q. [ ] The age of first incarceration is indeed highly correlated with recidivism, is that not true?

A. Yes.

Q. The younger you are when you first go to prison or to a detention institution, the more likely you are to be a recidivist in the future?

A. That is a predictive item in nearly every study that I have seen.

Q. You indicated in your direct examination that there were bases for let us say informed judgment as distinguished from actuarial accuracy. One can act on the basis of informed judgment in making decisions about criminal behavior, is that not correct?

A. One can. It depends on one's purpose which one chooses.

Q. It would be better, I take it, if one acted with actuarial accuracy than an the basis of informed judgment?

A. If one is basing one's decision on an essentially predictive statement, certainly. If one isn't, if one is dealing with culpability or seriousness of crime, then one is in an entirely different ballgame.

• • •

[363] Q. In fact, doctor, if you are called upon to make a decision about whether a juvenile is likely to commit a crime in the future, is one of the reliable bases for informed judgment that juvenile's prior criminal record?

A. It is one of the best predictors, yes.

Q. Well, doctor, I don't know that we need to use the word predictors. I am just interested in finding out whether or not you believe that the bases I suggest to you are reliable bases for the exercise of judgment.

A. Yes. Prior criminal record is certainly—I prefer that it was not handled by subjective judgment because I

don't know what weight may then be attached to it. I would prefer that this were established by [364] actuarial means.

Q. In other words, if you were a Judge and you had to make a disposition about the future criminal behavior of a child, you would look to prior criminal record, but you would want that weighted in some sense based on experiential standards, is that right?

A. I would prefer an actuarial summary of a large body of experience which would enable me to give more appropriate weights for the purposes of ascertaining the probable recidivism, but not, of course, for other purposes.

Q. You do agree, don't you, that the likelihood of a juvenile's committing a new offense increases with each successive offense he commits?

A. Yes. That applies pretty generally.

Q. By the way, within the recidivist group there is a group of more likely recidivators and less likely recidivators, is that not true?

A. Yes.

Q. The ones that are in the higher risk group, that is the more likely recidivators, are they more likely to recidivate early after release or earlier after release than the lower risk recidivators?

A. The findings haven's been very strong, but in [365] general it appears that the more likely a person is to recidivate at any time, the more likely they are to recidivate early.

Q. And the less likely they will recidivate later?

A. Yes. It's as though the two probabilities are not independent anyway, that the bad guys get into business somewhat sooner.

Q. Is another reliable basis for informed judgment about a juvenile's potential for criminal behavior whether or not he gets effective discipline and supervision in a supportive home context?

A. It is generally claimed that that is an indicator. I don't recall having identified that myself in the studies.

• • •

[367] Q. It is true, is it not, that * * * one of the most reliable bases we have of informing ourselves about a delinquent profile is an examination of the home environment of the child, is that true?

[368] A. Not the most predictive.

Q. I said one of the most reliable bases for informing our judgment, if we do have to make a judgment about the potential delinquent behavior of an individual, is an examination of the home environment of the child?

A. I have no evidence that that is so myself.

I would assume the family is important. Many have claimed that it is, but I haven't actually worked with attempting to predict people who will be delinquent, [ ] who are not already delinquent[,] because I have a moral objection to that.

• • •

[370] The Witness: May I offer, your Honor, an explanation? I would like to clarify the point, that I have never attempted to predict the likelihood of delinquency of children who have not received due process of law.

I take the view that children should not be sentenced by psychologists and on test scores. They have the rights to due process and for that reason

I have never got into the kind of work you [Ms. Gordon] were quoting [to] me of the Gluck's and one of the reasons I do not approve of the Gluck's work is on those grounds, that the prediction of potential delinquency is not a matter that I would get into—

Q. As a moral—

A. As a moral objection that even children have their rights to due process is my particular view there and I am willing to work with prediction of recidivism, but not of the likelihood of a person to commit the first crime.

Q. By the way, when you mentioned due process there, you are referring to the fact that a juvenile has already been adjudicated as a delinquent, is that what [371] you mean by due process?

A. I have dealt only with those who have been adjudicated in my experience.

* * *

[372] Q. Professor Wilkins, is instability of behavior in a juvenile, as illustrated, for example, by truancy, failure to report to home on a regular basis, failure to report to an after school job, if the child has an after school job, are those a realiable basis in any way for making an assessment about his potential for future delinquent behavior?

A. They are probably quite good data since they can be obtained fairly reliably, but that isn't the point necessarily, you see. You can get information overload.

In other words, if two things are highly associated with each other, you don't count both of them, although both may be extremely valid. So you have to look into the overlapping between these items. Otherwise, if you give each the

same weight, you are committing a very serious fallacy of inference.

Q. Is truancy highly associated with delinquent behavior?

A. It is so claimed. I have no data on that in my own studies.

• • •

[373] Q. Doctor, I ask you again: Is truancy in your opinion a reliable basis for informing judgment about [374] potential juvenile delinquency?

A. I would not rely on it alone.

Q. Is it a basis?

A. It is possible.

• • •

[376] *Redirect Examination by Mr. Guggenheim:*

Q. Professor Wilkins, you were asked on cross-examination whether or not a prior criminal record was a reliable factor to be taken into account in making a prediction. Are prior arrests reliable to take into account in predicting anything?

A. Arrest data with adults I know is usable, but you certainly don't need to use arrest data if one uses conviction data.

Q. You were also asked whether or not prior incarceration has a predictive quality in future criminal activity. Are there any studies to indicate that incarceration itself is causative of future criminal [377] activity?

A. Nothing that I find completely persuasive, but certainly there is fair evidence that the lesser time that people are detained, the less likelihood there is of their being re-

cidivist, but that is only within the range of penalties given. There is a natural experiment, if I recall, in Florida where people were released early. They were no more recidivist than those who were detained for full time. That is generally the finding.

[378] Q. * * * Let me give you a hypothetical based on some things you were asked on cross-examination.

Take a juvenile that comes before the Court with a previous record of a conviction who was presently truant from school and not getting along with a parent perfectly, the parent complains about their relationship to some degree, would you regard the prediction that that person would commit an act which would be a crime within the next month or two to be arbitrary?

* * *

[379] The Court: He must have been arrested and charged with some other offense, whatever that is, so give that offense if you wish to.

The Witness: Was the prior offense proven or not?

Q. First not.

A. It would be very dangerous to make any statements on the basis of that information. The false positives would be enormous, consider how many children play truant.

The Court: Well, I think the question asked was with a prediction that the child would be likely to commit a crime, would that be an arbitrary decision, I think that's what the question is. I gather that you have answered it differently but I think you can answer it specifically.

The Witness: I would say yes because obviously the base rate is the number of children who play

truant. With that as a base, the decision would be quite arbitrary.

Q. The same facts with the addition that a child had a previous conviction, would it still be arbitrary?

[380] A. It becomes slightly more predictive but the chances of being wrong are still very high.

Q. Your answer would be yes?

A. Well, yes, but a small yes.

The Court: * * * I want to be sure I understand. Am I to understand that your testimony is or is it your testimony that one can take data and you are comfortable in making predictions in terms of data about probabilities. In having that data and translating it to make a prediction about what an individual will do, am I to understand that you think at that point that the prediction is highly problematical?

The Witness: No, your Honor. I think it is quite safe to behave as though the probability attached to the individual in the light of there being no other evidence to go upon. One can only deal with the individual in the light of the evidence and part of the evidence would be that probability and since we cannot discriminate this individual from any other individual in [381] the same set, then all other things being equal, it would be ethical to deal with him in that way.

The Court: So that, let's say, people my age, background, so forth, it has been shown that 40 percent of them commit a crime and I come before the court and the court can predict that there is a

40 percent chance that I will commit a crime, is that what you are saying? Is that how you translate it to the individual?

The Witness: May I put it another way? If I were an employer and a person of a particular set of backgrounds appeared, then I would be advised in the pure efficiency sense to behave as though these people with these characteristics would be likely to commit a crime. But that doesn't mean to say that it would be an ethical consideration.

The Court: We are not talking about ethics at the present time. I am really trying to find whether —ethical or not—whether there is a basis for it being informed. The ethics, we will put aside for the moment.

Let's take what you call clinical and subjective and I think the only—my understanding is that the only way these matters can be done, that's before me, is a subjective or clinical decision. What do [382] the person or persons who are making it, is it required that those people have some kind of training and background in some area? What would you have them trained in, what kind of background would you have them trained in? Or can I just walk off the street and I get a job and I can do that? Is that the way we can go about it?

The Witness: I would prefer, your Honor, that one use both the actuarial and then reexamine the case as to whether there were any outstanding reasons as to why the actuarial was not applicable and that in those cases where the clinician sets aside the

actuarial, if he then gave his reasons, those reasons could then accumulate more information to improve the actuarial. That would be, for my mind, the best, most efficient way of doing it.

The Court: I know, you haven't answered my question. I may get to that.

I am talking about the qualifications of the predicter. I am trying to forget your reaction. What does the predicter have to have? What does he need in terms of training?

The Witness: Well, your Honor, all one needs is really good, sound data that is reliable.

The Court: That is if he uses the actuarial [383] and he takes the data.

The Witness: Yes, as long as it is reliable. By and large we find a very considerable amount of error in the case papers that we have examined so far.

The Court: What if he doesn't have the actuarial, does he have to make a judgment based upon his own instincts? What kind of training does he need? Does he or she? I am being very American now, I should take he or she. What kind of training does he need.

The Witness: There is really no evidence that training as such makes very much difference, unless it is training in the use of instruments. Psychologists, I suppose, are the main subjective assessors but they use quite a lot of materials of various kinds and the training is more in relation to the use of instruments than in handling the individual's own subjectivity.

The Court: So you think the psychologists or criminologists or penologists or whatever you are is no better, we are no better off than having someone with that kind of training than having someone do this who are just out of high school and have no particular training whatsoever?

The Witness: I would say it depends entirely on their ability to use the instruments in which they [384] could receive training. While the psychologist, since you cannot predict in advance what kind of cases he will see, he will have to have a fairly large kit of tests and materials. But where you can say this person is only going to make decisions of one kind, then his particular tool kit would be narrowed down and he can become as much an expert with his narrow tool kit as can the general practitioner with a very much larger tool kit.

I would think it is mainly the tools and the use of tools which are the basis of any expertise.

The Court: Thank you.

• • •

Testimony of Lynwood David Zinn
(Excerpts)

[385] LYNWOOD DAVID ZINN, called as a witness by Petitioners, was duly sworn and testified as follows:

Direct Examination by Mr. Guggenheim:

Q. Dr. Zinn, would you state your profession?

A. Child psychiatrist.

Q. Could you indicate to the Court your [386] educational background, where you received your degrees and what degrees you hold?

A. I graduated from Washington and Lee with a bachelor's degree, studied at—did graduate work at the University of Michigan subsequently for three years and then went to medical school at the University of Virginia. I received my medical degree in 1968. Interned at the University of Wisconsin hospitals in Madison, Wisconsin, 68 to 69, then did a residency in general psychiatry at the University of Chicago from 1969 to 1971. Then I went to the University of Michigan where I had my child psychiatry training during the period 1971 to 73. At that point I joined the staff at University Hospital faculty of University of Michigan where I remained until 1977 when I moved to Chicago. Currently director of child psychiatry at Michael Reese Hospital, and clinical assistant professor at the University of Chicago.

Q. Do you possess any board certifications?

A. Yes, I'm certified in both general psychiatry and child psychiatry.

Q. And are you admitted to practice medicine or do you hold any licenses?

A. I'm licensed to practice medicine in Virginia, Michigan and Illinois.

[387] Do you have any previous employment relative to juvenile court practice?

A. Yes. I was a consultant to the Washtenaw County juvenile court.

Q. Where is that located?

A. In Washtenaw County, Michigan, the county that Ann Arbor is located in.

Q. When did you consult to that court?

A. I did evaluations for them over a period of a number of years. I was their chief consultant during '76 to '77.

Q. Do you belong to any professional organizations?

A. Yes, I do.

Q. Would you name a few?

A. The American Psychiatric Association, the Illinois Psychiatric Society, the American Academy of Child Psychiatry, the Chicago Council for Child Psychiatry, American Society for Adolescent Psychiatry and the Chicago Council of Adolescent Psychiatry and National Council on Crime and Delinquency.

Q. In your consultant work with the Washtenaw County juvenile court, what functions did you perform?

A. I would advise the courts on issues or [388] questions that they would give me. It ranged across a wide variety of topics.

Q. Did you interview with or treat any juveniles in that practice?

A. Yes. I didn't treat but I would evaluate juveniles at the request of the court and the probation department.

• • •

The Court: What does that mean? What does evaluate mean?

The Witness: I would be asked to interview a juvenile in the context of a particular question that would be raised by the courts, often having to do with the appropriateness of a particular kind of treatment. Frequently there would be difficulties with young people already in placement and they would ask my recommendation about different treatment plans.

• • •

Q. You indicated that your present position is as director of child and adolescent psychiatry at Michael Reese Hospital?

A. Yes, it is.

Q. What function do you perform in that capacity?

A. I'm responsible for the teaching programs and [389] the service programs in child psychiatry which include a child clinic, adolescent out-patient clinic, a consultation liaison program[ ] to the department of pediatrics, an adolescent in-patient treatment, a day treatment program and then there is a training program for child fellows, that is doctors in training to be child psychiatrists as well as a training program for general psychiatrists.

Q. At this time I show you this document [Petitioners' Exhibit 41 for identification] and ask you if you recognize it?

A. Yes, I do.

Q. What is it?

A. It is my curriculum vitae.

• • •

[393] Mr. Guggenheim: I would at this time move that Dr. Zinn be recognized as an expert in the field of child psychiatry and—that's all.

The Court: You mean child and adolescent?

Mr. Guggenheim: Child and adolescent psychiatry.

The Court: Any objection?

Ms. Miller: No objection, your Honor.

• • •

[394] Q. * * * There has been evidence in the record that there are juveniles who have never before been convicted of a crime, brought to court, arrested and charged with committing a crime who are detained pretrial and who are eventually released from custody without having been found guilty. The case was dismissed. What effect, if any, can that experience have on a juvenile?

• • •

[395] The Witness: * * * But the force of the question, if I understand it, is young people who have not committed a crime who are suspected of a crime who are detained because of that suspicion and then are subsequently found not guilty in the judiciary process—

The Court: Well, I think what you better do in order for that to be accurate, I think you better take out the first equation which is that they have not committed a crime. The charges are dismissed may not mean that they haven't committed a crime, but in any [396] event take the first equation out. The second one is that they are arrested on suspicion,

are held and detained and then the charges are dismissed. Then he is asking you—what's the question?

Q. What effect, if any, can that have on a juvenile?

A. Well, I think that the effect would depend upon whether the young person had in fact done the crime in question and if I can talk about both groups of young people, for a young person who has in fact committed the crime in question, I think it would leave him with a somewhat cynical attitude about the judicial process and the adequacy of its functioning in society. It would further, I think, fuel a certain amount of grandiosity that it is possible to beat the system.

For a young person who has not in fact committed the crime in question, I think that there are a couple of consequences which I would divide into two types of things. One having to do with the meaning of the experience. The second having to do with the actual consequences of the experience.

In terms of the meaning of the experience, for the early adolescent, the police and, as the early adolescent gets older, the judiciary are the foundations of moral order in the society and in effect [397] organizational social functioning. To be treated in a way that does not reflect their conduct, can leave them questioning the validity of that moral process.

Once these vicious cycles, as kids go through the system, and problems develop and the more the problems develop the more distrust develops in the young person and the less cooperative they are and the less they come to believe that the police and the courts do in fact responsibly reflect moral order.

The second effect that I would point to are the real consequences of separation from family and from community and as an aspect of community, the school.

I think here considerations of time are very important. While a few days to a few weeks may not be so important to an adult, to a young person, that time is infinitely longer having lived for a relatively shorter period of time.

Of course, in many school programs, it is very difficult to make up work and get back on target. Just parenthetically, I might add, that one of the studies that I was involved with in Ann Arbor during that first period, '61 to '64, was a survey of educational—or the role of educational failure in delinquency and there is fairly strong evidence of a pattern with delinquent young [398] people of falling behind in school, of suffering a blow to their self-esteem which makes it that much harder for them to function which pushes them that much more to the periphery of appropriate developmental activities and vicious cycles get set up accordingly.

• • •

[399] Q. Dr. Zinn, when we left off, you were describing the affects on juveniles who are detained pretrial whose case is ultimately dismissed in Court and are there any other effects that you haven't given already to the Court?

• • •

[401] The Witness: I don't recall talking about exposure to delinquent subcultures and the implications of that.

The Court: No, you did not. I can verify you didn't do that. That is something in addition and you may add to that.

The Witness: Well, there are a number of studies on the course of delinquents and adolescents that would suggest that the most important predictor of a future juvenile court appearance is a prior juvenile court appearance. The more the young person becomes involved with the court and with court placement, the more likely it will be that they will have subsequent court involvement. So one would add to the effects the possibility of directing the young person away from the mainstream of adolescent development and more in terms of a delinquent subgroup.

• • •

[402] Q. Is your answer substantially the same regarding the effects of the detention if a juvenile is detained in a [nonsecure] facility which is not characterized by restrictive objects such as bars on windows or locks on doors?

A. Well, it isn't the physical facility in and of itself that gives the quality of the incarceration or the detainment.

The Court: I think you ought to add entirely. I think it does give some substance to it. Not entirely. I won't accept a blanket statement that it isn't the [403] quality of the facility but you could say entirely and I will agree with it.

The Witness: Okay. Entirely. It is the relationship wtih people which [is] also important which is a way of saying that in theory one can have a physically more constraining environment with sym-

pathetic and [em]pathic people which might not be as traumatizing as a community facility where there were people who were brutal or harsh or dehumanizing.

* * *

Q. Have you seen the Petitioners' Exhibits 1 to 28-A in evidence?

A. Yes, I have.

Q. Do you have an opinion concerning the accuracy of the predictions in those exhibits that children would engage in criminal behavior?

A. I have an opinion, yes, that they would not be accurate.

Q. Why is that?

A. Well, it springs from a couple of sources. One is the way that I understand prediction in terms of my professional activities. The other has to do with [404] what I know generally about prediction of behavior. Should I elaborate on those two?

Q. Yes, please.

A. Well, prediction in my own professional activity has less to do with making a prediction about future behavior than it does making an assessment of the likely response of somebody to treatment. That is, as a medical professional, one attempts to diagnose a condition which on the basis of previous practice is treated in a certain way and on the basis of previous experience one can make certain statements about a likely response. It is not a prediction of behavior.

In the second sense, though, my understanding of difficulties with prediction of behavior would be very similar

to what Professor Wilkins said this morning, that the situations are always so complex that given our understanding at this point it is difficult to make any firm statements.

One thing that I think should be emphasized is that judging from the exhibits there seems to be a sense of dangerousness or risk residing in the individual. That is, one makes an assessment of the individual [and] on the basis of that makes a prediction about future difficulty. I think that leaves out an important part of the equation, [405] which is the situation.

I think all we know about delinquent acts is that it involves a vulnerable individual in a particular situation and I think it would be difficult to make a statement about future behavior unless one had rather detailed information about the situation that that individual was going to be in.

Q. Let me try to fill you in a little bit on some of that detail.

Assume that the recommendation which is read in court which is contained in the exhibits that you have read was based on an interview that took from 10 to 40 minutes, made by a probation officer who interviews with the child and a parent and perhaps a police officer or a complaining witness in addition.

What would your opinion be of the process and the probability of the prediction being accurate?

A. Well, I think it would take a child psychiatrist a much longer period to do an adequate evaluation of an individual and that individual's family and community environment. That strikes me as a pretty short period of time.

• • •

[406] Q. Do you have an opinion based on your experience as a consultant with a juvenile court of the efficacy of the use of an interviewing process which leads to a recommendation that a child be detained based on a prediction that if released the child would commit a crime?

A. * * * I was never asked to make that kind of statement. Were I asked, I wouldn't do it. I don't see that as within my expertise.

What I would be asked about is, once a decision had been made that a young person was coming under the jurisdiction of the court and the court was then in a position of placing the child, then I would make recommendations regarding what I thought to be suitable placements.

* * *

[407] Q. Are you familiar with the American Psychiatric Association's Task Force Study on Clinical Aspects of the Violent Individual?

A. Yes, I am.

* * *

[408] A. This is "Clinical Aspects of the Violent Individual," a task force report from the American Psychiatric Association done in 1974. Dangerousness, I can't find just quickly [ ] the definition of dangerousness that's specifically used but it refers in general to behavior which is harmful to either the individual or other persons or society. They emphasize, this is on page 26, that "dangerousness is neither a [409] psychiatric nor a medical diagnosis" and go on in the conclusions to state that "the clinician should not regard the prevention of future violence as within his proven capability."

It has been noted that "dangerousness is neither a psychiatric nor a medical diagnosis but involves issues of legal judgment and definition as well as of social policy. Psychiatric expertise and the prediction of dangerousness is not established and clinicians should avoid conclusory judgments in this regard."

Q. Is that report generally accepted in the field?

A. I believe it is.

• • •

[410] Q. Dr. Zinn, what in your opinion is the valid purpose of making an assessment of a juvenile who comes before the court accused of committing a crime?

A. To develop a treatment plan which more specifically is to make an assessment of what kind of interventions would be in the best interest of the young person involved and the probability of those interventions being successful.

Q. Why would, if it ever would, removal from a child's home be recommended?

• • •

[411] The Witness: Well, the usual reasons that a psychiatrist would make such recommendations, three occur to me offhand.

The first is that there are some egregious influences in the home from which the young person needs to be protected. I should say that as you all probably are aware there have been an increasingly conservative attitude toward this on the part of mental health officials, a reluctance to remove a person from his or [412] her home without a clear reason for doing so. More often than not that depends upon an evaluation of the actual home environment by

a social worker or court worker who has first-hand knowledge of what the problem is.

The second reason would be because of emotional illness a child needs protection or society needs protection from the child.

The third reason would be that treatment is required which can only safely be done in a hospital or a treatment environment.

As an example one might have a young person who deals with trouble and emotions by drinking. If you attempted to deal with that in the out-patient setting, every time the emotional issues were dealt with and the young person went out and got drunk and placed themselves at risk, the treatment would be counterproductive. One would want to have them in a protected environment where the behavior problems could be short-circuited.

• • •

[413] [*Cross-examination by Ms. Miller:*]

Q. Doctor, have you in the course of your psychiatric experience either had occasion to make a decision or to assist in making decisions as to whether particular juveniles should be admitted to or discharged from a psychiatric hospital?

A. Yes.

Q. You have?

A. Yes.

Q. Have any of the situations in which you made those determinations involved juveniles who were accused of violent crimes?

A. Yes.

Q. Have any of those decisions, admissions and discharges, involved juveniles who were accused of crimes that were not violent crimes?

A. Yes.

• • •

[414] Q. I would like you to assume that you have to make a decision about discharging a child, a 14 year-old child who has been accused of a violent crime.

When you come to that discharge determination about releasing that child back to his family into the community, do you give any consideration to the risk that he might commit future crimes?

A. Some, but not preeminent consideration.

Q. The child that committed a violent crime, do you give any consideration to whether he will commit another violent crime?

A. Yes.

Q. You do?

A. But again I emphasize that's not the preeminent consideration.

Q. But it is one of the considerations?

A. Yes.

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[415] Q. All right, doctor, I would like to turn this around and go to the other end of the procedure and put you in several hypotheticals. This would be on the intake or the emergency admissions side of the hospital. You

are working on this side of the hospital and you are informed that there is a [12] year-old brought in by the police who the police say was arrested while making a sniper attack on pedestrians from the roof of a building.

The police also have told you that it was [416] 12:00 at night and that the building where the child was taking the shots from is not his home. Several pedestrians were killed.

• • •

Q. The police have brought him to your hospital.

In deciding whether or not to keep this child—I would like to add one other factor, the child is totally uncommunicative. He says nothing. You only know his age because it was on a piece of paper that he carried that didn't tell his address and he is totally uncommunicative to the police.

In deciding whether or not to keep this child [417] or to send him away or to release him, would you give any consideration to whether or not this child would commit further violent acts if you released him?

• • •

[418] Q. You have to make the choice as to whether you are going to send him away with the police, release him, I assume, or keep him.

The Court: Or admit him for treatment.

Q. Or keep him before admitting him for treatment, your Honor. I think there possibly might be more than one step.

• • •

[419] A. Well, the simple answer, having nothing to do with the legal issues, is that you would want to do an evaluation in the emergency room.

Q. That's a period of observation before you admit him, is that correct? We assume at this point it would have to be—

A. We have already observed that the boy is uncommunicative, so the evaluation would consist of getting ahold of the parents and finding out what the situation is, the background to this.

Q. Would you do that before you admitted him?

A. Yes.

Q. So you would keep him for that period until you had determined that you were going to admit him?

A. Right.

• • •

[421] *By Ms. Miller:*

Q. Let me take another example, then. You are in the same situation. You are in the admissions room and a child is brought to you by the police. He is 12 years old and apparently they tell you that he shot his stepfather in the course of a family quarrel and it concerned the stepfather's treatment of his mother.

[422] Now, would you keep the child or would you release him?

• • •

[425] The Court: I guess the question she is trying to bring out is whether or not if the child is brought in, if the child doesn't want to be, being accused of that kind of crime, even if the child does not wish to stay, what would be your reaction being in the custody of the police; would you still keep the child in custody until you can make some kind of

determination? I think that is what she is trying to ask.

Ms. Miller: That's correct, that's exactly what I am asking.

• • •

[426] The Witness: On the face of the facts, would I recommend observation for treatment; is that what you are asking?

The Court: Yes.

Q. Yes.

A. The odds would be yes.

Q. And somebody makes that decision?

The Court: Somebody what?

Ms. Miller: He says he makes the recommendation.

The Court: That's all right. We will assume that the odds are that he assumed he will make that decision, yes. Let's not complicate it any further. It's complicated enough as it is.

• • •

[427] *By Ms. Miller:*

• • •

Q. In treating a juvenile or in formulating the treatment that you are going to give a juvenile who has a pattern of criminal behavior, is one of the things you look to the family relationships, the family environment?

A. Is the family environment important in developing the treatment plan, is that the question?

Q. Yes.

[428] A. Yes.

Q. Do you look into the causes of the child's problem when you are formulating treatment?

A. Yes.

Q. Do you look to the [ ] family?

• • •

A. Yes.

Q. Similarly in formulating treatment, do you consider a juvenile's impulsiveness or his instability, and by that I mean his truancy or his failure to respond to adult authority, to be a factor in formulating his treatment?

A. Yes.

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[429] Q. All right, truancy, staying out late at night—

• • •

Q. Doesn't obey his parents, his guardian.

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A. What is the question again?

Q. Do you consider that in formulating, one, the treatment for a child who has a pattern of criminal behavior?

A. Oh, sure.

Q. And do you, secondly, look to it in looking to the causes of the child's pattern of criminal behavior?

• • •

[430] The Court: Is the truancy and the fact that the child doesn't obey his parents or guardians and so forth, is that related to the fact that the child

or juvenile is guilty of deviant or criminal behavior? That's what she is asking you.

• • •

The Witness: It strikes me as all part of the same process. I mean, one doesn't talk about aspects of somebody's behavior. If a child is truant and at the same time committing acts which are considered criminal, it's all the same thing. It's a behavior problem.

Q. In treating a child who has a criminal pattern of behavior, do you consider the number and the nature of his prior criminal acts in formulating his treatment?

A. I consider the pattern, yes.

Q. You don't consider the nature? In other words, if a child was brought to you accused of five rapes in the last five months, the fact that it was rape is not important?

A. Sure.

Q. It is important?

[431] A. But one considers everything. I mean, when you ask a question like that, any fact that was known about the child I would consider relevant.

Q. Do you think that prior criminal behavior is related to present criminal behavior?

A. Yes. I believe I already said that.

Q. Do you agree with the proposition that there are at least some juveniles who will continue to engage in criminal behavior until they are stopped by the intervention of some societal authority?

A. Yes.

• • •

[432] Q. Does the fact that the child has been found guilty of criminal acts change the course of your treatment?

The Court: Are you asking him if he started treating someone before they were charged with a crime and then they are charged with a crime and found guilty, if that fact alone would cause a modification of his treatment?

Ms. Miller: Yes.

• • •

A. Well, it would depend on what the criminal activity was.

You know, it occurs to me that perhaps you don't realize how common criminal activity is among young people these days.

The Court: Please, without that. The question is she is trying to ask you is would the fact that in the course of your treatment he is found guilty of a crime, whatever that crime is, would the fact of his being found guilty alone cause you to modify your [433] treatment?

The Witness: Not invariably. It would depend on the—

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Testimony of Hon. Cesar Quinones
(Excerpts)

[435] CESAR QUINONES, called as a witness by the [State, was] duly sworn [and] testified as follows:

Direct Examination by Ms. Gordon:

Q. What position do you hold?

A. I am a judge of the Family Court in New York City.

Q. How long have you been a judge?

A. Since August of 1970.

• • •

[436] Q. Have you spent any of that time, that is since August of 1970, in courts other than the Family Court?

A. Yes, I have.

Q. What courts were those?

A. I sat in the Criminal Court, New York City Criminal Court for 26 months. That was from January 1975 until the end of February of 1977.

Q. In what parts of the Criminal Court did you preside when you were there?

A. I sat in the youth parts, I sat in a jury trial part, all purpose parts and in the arraignment parts.

Q. Returning to your responsibilities with the Family Court, in what parts of the Family Court have you presided?

A. I have presided in all parts of the Family Court, including all purpose parts, the intake parts, foster care review, the child abuse parts, the designated felony part. I have sat in all the parts that comprise the Family Court in the City.

Q. You are familiar with Section 739 of the Family Court Act, are you not?

A. Yes, I am.

[437] Q. In what part of the Family Court are determinations under that statute made?

A. Usually those determinations are made in the intake part.

• • •

Q. In any event, Judge, could you just briefly allocate your time, at least with reference to the intake part of the Family Court, between August of 1970 and December of 1974?

A. I would estimate that during those years I [438] used to sit in the intake part an average of possibly two or three months a year.

The Court: How long has that statute been on the books? It has been on the books since 1970?

Mr. Guggenheim: Since 1962.

Ms. Gordon: There have been some amendments, your Honor.

• • •

Q. From the time you came back to the Family Court after you were sitting on the Criminal Court in February of 1977, could you tell us or allocate for us the time you spent in the intake part?

A. Well, that would be a little difficult. I wasn't sitting in an intake part on a regular basis. It would be now and then: Perhaps in Kings County, in the Bronx, in Manhattan, so it was irregular, at least at the beginning.

[439] Q. How about in the current time period?

A. At current I am sitting in Kings County and there there are four judges that are rotating between the two

intake parts, that's intake A, intake B, part 4 and part 8, so I would be one of the four that goes in regular rotation into intake A at present.

The Court: How long has that been the practice?

The Witness: This system, with the four rotating, started, I would say, sometime in October of last year.

The Court: So you have been in the intake part in one form or another since that time, is that what you are saying?

The Witness: No, sir. We usually sit for periods of two months in the intake part. By the intake part I am talking about intake A, which is the part where the juvenile cases originate.

Then after a two month stay in intake A, I rotate to intake B for an additional two months.

From intake B I will go for an additional two months to part 4 and then from part 4, at least the present set up the way it is now, I will go into part 8.

So I would say that now I would be spending [440] two months out of every 8 months or something like that in intake. I would imagine that is it.

The Court: I think that covers it.

By Ms. Gordon:

• • •

Q. By the way, what is part 4? What does one do there?

A. Part 4 is the part designated as the designated felony part.

Q. Is that for the trial of designated felonies?

A. It is.

Q. Would you please briefly describe your professional experience prior to becoming a judge.

A. Immediately prior to being appointed I was secretary to a Supreme Court justice in Kings County, that is Justice Thomas H. Cullen. That was from January 1969 until August 1970 when I was appointed to the bench.

Prior to that time I was in private practice as a partner in the firm of Erazo and Quinones and—well, I guess that would be it.

[441] Q. What was the nature of your practice with Erazo and Quinones, if there was any specialty or subspecialty to that practice?

A. It was a general practice. It started out as a neighborhood practice and my particular specialty was court work. In other words, I did most of the court appearances and quite a bit of it was in criminal law.

Q. Did you have any relationship with the Bedford Stuyvesant Community Legal Services Corporation?

A. Yes. I was chairman of the board of the Bedford Stuyvesant Community Legal Services Corporation during 1969-1970. Prior to that I was on the board of directors.

[442] Q. Could you just briefly tell us the principal organizations to which you belong and the positions which you hold with them, if any?

• • •

A. I am treasurer of the New York City Family Court Judges' Association, I'm a member of the board of directors of the Medgar Evers College Community Council. I am on the board of directors of the Mercy Home for Children. I'm on the board of directors of the Brooklyn Men-

tal Health Association. I'm on the board of the Manhattan Community College. There are others, other community organizations but right now I can't think of them.

Q. Judge, I show you Section 739 of the Family Court Act which is in the current McKinney's volume and I show you also the pocket part of that volume so that we have the complete statute. I'm sorry to make it a little inconvenient for you.

Judge, I direct your attention to subdivision [a] and sub [i] and sub [ii], and ask you whether or not you have an opinion as to whether there are juveniles who [443] appear in the intake part of the Family Court who come within subdivision [a][ii] of the statute, that is, serious risk of a crime before the return date, who do not come within subdivision [a][i] of the statute?

• • •

A. Yes.

Q. What is your opinion?

[444] A. I feel that there are such type of children that would fall under the second category and not necessarily under the first.

Q. Would you tell us or give us an illustration of what type of child that might be that comes within [a][ii] but not under [a][i]?

A. I think that the most clear example would be a youngster who has had many contacts with the court, who has appeared in court on each of the prior contacts so that there is really no question as to whether he would return to court or not, but that because of the numbers, the sheer numbers of contacts that he has had with the court or perhaps with the number of prior findings that you have had, although he returns to court, the court or judge might feel

if released this youngster would pose a grave risk of committing another crime pending the next court appearance.

Q. Judge, turning, if we may, to the actual circumstances in which you, sitting at intake, consider whether or not to release or detain a juvenile, I would like to know what papers, if any, must be before you when you are going to make a determination under 739?

A. Well, the first thing, obviously must be a valid petition.

[445] Q. Would you just tell us briefly what the petition sets forth, just in summary fashion, if you can?

A. Well, it sets forth the essential elements. In other words, the name of the respondent, his age, the age is necessary because we wouldn't have jurisdiction unless he were under the age of 16.

* * *

Q. Before you make a determination under 739 and assuming you have before you the just the accusatory instrument as you indicated, made out upon information and belief, do you have to have any other information in support of the charge contained in the petition before you come to consider the 739 issue?

[446] A. If the information or rather if the accusatory instrument is on information and belief, I don't believe that that would be sufficient to give us jurisdiction. It must be supported.

Q. What does that mean, Judge, what does it have to be supported by?

A. Well, either a supporting affidavit from somebody who does have direct knowledge who indicates that they had read the petition and that the petition is true. I don't

believe that it can be based merely on information and belief.

Q. When you say a person with direct knowledge, is that a person with direct knowledge of the acts which are alleged to constitute the crime?

A. Yes.

> The Court: Well, let me ask you. That could be either a witness or the victim, is that correct?
>
> The Witness: A witness or the victim, precisely, yes.

Q. If you don't have the written statement of the witness or the victim, can you have the presence of the witness or the victim in your courtroom?

> The Court: If he doesn't have what?
>
> Ms. Gordon: If he doesn't have the written [447] statement of the witness or the victim, can the written statement be excused, as it were, if you have the presence of the complaining witness in your courtroom at the 739 proceeding?

A. I don't see how that would happen, because if you had their presence, you would have the person sign the petition itself. I don't see how that would happen.

Q. Who, if anyone, must be before you in the courtroom when you consider the release-detention determination under 739? What individuals must be before you?

A. Well, we have the respondent, of course.

Q. That's the juvenile?

A. Yes. The respondent is represented by counsel, so if he doesn't have counsel when he comes in, then the court

will determine and before anything further happens, counsel will be appointed for the respondent. The Corporation Counsel or the assistant district attorney, depending on the petition, is usually present. You have a court liaison officer that is a representative of the probation department or at times you can have the intake probation officer himself or if the respondent has prior contacts with the court, perhaps his individual probation officer might be present.

[448] Q. What about an adult who is responsible for the child, do they have to be present or are they normally present?

A. It is desirable if they are present and we would try or at any rate, as often as possible, to have either a parent or somebody representing the parent present. There are times that it is impossible for one reason or other and at that time perhaps a guardian ad litem might be appointed in place of the parent at least for that day's purpose or at times perhaps the attorney might waive the presence of the parent for that purpose.

The Court: Have you listed for us all the people that you require to be present, which, as I understand it, is the juvenile and his counsel and the city prosecutors' arm in one form or another and the Court liaison officer, are those the essentials?

The Witness: I believe those are the essentials. There might be some additional personnel but those are usually the ones that are usually present.

The Court: You can proceed with those persons present and no others?

The Witness: That is correct.

The Court: There may be others present?

The Witness: There may be others there but at [449] least that [many].

Q. What is the function of the probation liaison officer or the child's own probation officer, if that happens to be the case, at the proceeding? What does he or she do?

A. The purpose of the court liaison officer is to give the court some information concerning the respondent, either with reference to past history, past contact with the court, some information about the home situation, the school situation and based on this information which either the intake probation or the regular probation officer gathers, either from interviewing the respondent beforehand or interviewing the parent or any other persons that are germane and based on that information, the court liaison officer will make a recommendation to the court with references to either remanding the youngster or paroling the youngster.

Q. By the way, if the probation officer simply makes the recommendation, says, remand or parole and that's all the probation officer says, may the judge inquire of the probation officer as to the basis for the recommendation?

A. Oh, definitely.

Q. By the way, just so we get our terminology [450] straight. Parole and release are synonymous terms, is that correct?

A. That is correct, yes.

The Court: It has been brought out in prior proceedings in this case that the court liaison officer is present in the courtroom and is not the probation

officer who actually has done the interviewing with the parents and so forth, that some other probation officer does that and sends onto him the recommendation and he in turn tells the judge what this officer recommends, is that correct?

The Witness: That is correct, your Honor, that is usually the case.

Q. What is the function of the juvenile's attorney in the proceedings before you or what does he usually do?

A. Well, he is representing the juvenile and I would say that his function is the function of any defense attorney, to do the best he can for his client. He questions the validity of the petition, he makes the necessary motions, if he feels that the petition is insufficient. He will argue in favor of releasing the youngster. He will bring forth the more favorable aspects of the situation.

[451] In other words, he is acting as a defense attorney.

The Court: I have the impression from the way this is described that counsel and the City and the court liaison officer are in fact before you or before the judge and are making representations and that nobody goes on the witness stand and makes representations?

The Witness: No, sir, they are not on the witness stand. It is all part of the proceeding.

The Court: They are all before you and the court liaison officer will tell you what he feels and counsel will argue on behalf of the juvenile and the

City or the prosecuting arm will present their views to you? Is that correct?

The Witness: Well, I don't think that you will find the Corporation Counsel too often saying anything. Occasionally if they feel that you have some extraordinary circumstances, perhaps they might also recommend or make a recommendation. But most of the time the recommendation comes from the court liaison officer.

Q. In the course of this proceeding does the juvenile have the right to remain silent?

A. Yes.

Q. Is a plea entered on behalf of the child [452] either at this proceeding or at some prior proceeding if this is not the first one and does the child have to admit or deny the charges or someone on his behalf have to admit or deny the charges?

A. Well, a plea is usually entered and it is usually a denial.

Q. If an adult, the responsible adult is in court on behalf of the child, what is that adult's usual role or function, how does he participate, if at all?

A. The adult represents the person in charge of the welfare of the youngster. It is a parent or an older sibling or a member of the family, an adult member of the family, or perhaps a neighbor who appears in place of the parent who can't appear and the role is one of—usually supportive, is there in support of the youngster. The adult is interviewed by the probation officer and the adult is allowed to say something, if the adult wishes to address the court.

Q. May the court address the adult if the court so chooses?

A. Yes.

> The Court: What do you mean by "may the court address the adult"? The court is in charge and the court can do anything he wants to in his own courtroom.

* * *

[453] Q. Judge, could you just tell us if the court does inquire of the adult who is there, what is the usual nature of that inquiry. In other words, what does it relate to?

A. It usually relates to the behavior of the youngster at home, the relationship between the parent and the youngster, because when you parole a youngster, it usually is in the custody of the adult and the court wants to find out as much as possible about the youngster and that's one way to do it. You ask the parent's opinion. After all, the parent should know the child better than most people.

Q. * * * I ask you whether or not it is possible for a juvenile to call witnesses on his behalf at these proceedings?

A. It is not the usual situation but occasionally [454] there are people who accompany the youngster to court. This might be a clergyman or some social worker who has been working with him in the community. It could be an interested relative and occasionally they are accompanied by these type of people, yes.

> The Court: What happens? In those situations if they want to make statements, it is allowed?
>
> The Witness: Yes, it can be allowed, yes, definitely.

The Court: I know it can be. I am not asking that.

The Witness: Is it allowed?

The Court: Is it generally allowed?

The Witness: Generally, yes. Personally, I feel if somebody takes the time and interest to come to court, then certainly the least I can do is allow them to give me the benefit of whatever they have to say.

The Court: That's what I wanted to find out.

Q. Judge, for what purpose are those witnesses that you would hear be brought when they do appear? What do they testify to?

A. Usually they are brought in a supportive role, supporting the youngster. In other words, it is usually to present the youngster in as positive a light as can be. [455] Something to induce the court or maybe persuade the court that the youngster can be released.

Q. Do the children who appear before you in these proceedings appear in handcuffs or restraints if they are coming from Spofford and for that reason, that is coming from Spofford?

A. No, it would have to be a really extraordinary situation for a youngster to appear before the judge in handcuffs.

• • •

Ms. Gordon: My question is how do they appear before the judge.

The Witness: I do know they use cuffs to transport them in the halls and other places like that.

• • •

[456] The Witness: Not in the courtroom. Except, again, unless you have a really unusual circum-

stance where the youngster is said to be extremely violent or for something like that. It would have to be an extraordinary situation.

* * *

[457] Q. Is the proceeding before you under 739 akin to the proceedings that you sat on in the arraignment part in the criminal court of the City of New York?

A. Yes, they are very similar.

Q. Are there any salient differences that you are aware of other than the fact that one results in bail most often and this results in detention or release?

A. Well, that is the biggest difference and, of course, we have the other difference which is that there is no preventative detention provision in the criminal court.

Q. In other words, the nature of the determination may be different?

A. Yes. But outside of that they are very similar.

Q. Judge Quinones, turning back to the statute, I call your attention to both subdivisions [a][i] and [a][ii] of the statute and note that they refer to events that occur on or before the return date. What does the term return date mean as it is used in that statute?

A. Return date to me means the next scheduled appearance of the matter before a judge.

Q. In a juvenile delinquency proceeding, what is [458] usually the next proceeding that occurs on the return date after the 739 determination?

A. The next appearance would be for a fact finding hearing.

Q. By the way, is that the adjudicatory phase of the juvenile delinquency proceeding?

A. Precisely, the fact finding.

Q. Now, in the ordinary course, what is the amount of time between the date a determination under 739 is made and the commencement of fact finding or the next return day?

A. Well, there are several factors that had to be taken into consideration there. First, the availability of witnesses, the preparation that might be needed by both sides, the Corporation Counsel, the district attorney or the attorney representing the respondent, so depending upon the complexity of the case, depending upon the court calendar, it could be anywhere from several days to several weeks.

Q. Do you have any knowledge of approximately what the current time lapse is between a 739 determination and the commencement of fact finding in Kings County?

A. No, I don't, but I do know that we have a [459] limit, in other words, we have a 90 day period within which we are supposed to reach fact finding from the time the case is drawn, we are supposed to have fact finding within 90 days of that time.

The Court: From the time of what, judge?

The Witness: From the time the petition is first brought into court.

The Court: From the petition to the fact finding, 90 days?

The Witness: That's right.

• • •

Q. Judge Quinones, could you address yourself to that interval [between the time petition is drawn and the 739 hearing]?

A. The drawing of the petition and the appearance [460] in intake is usually simultaneous. It is usually the same day or perhaps the day after, but it is usually simultaneous.

Q. Does the judge who is making the determination under 739 also set up the next calendar date?

A. That is correct, yes.

Q. So it is he who determines when the fact finding proceeding, if that's the next proceeding, is likely to take place?

A. That is correct.

* * *

The Court: I want to be sure that I am right on this.

In Kings County you have to make a fact finding determination within 90 days of the filing of the petition, is that correct, or is it fact finding hearing?

The Witness: You are supposed to arrive at fact finding. You are supposed to have a fact finding hearing within the 90 day period. There are exceptions to it but those are the guidelines.

* * *

The Court: You are supposed to make a fact [461] finding?

The Witness: Yes, within 90 days. That is the guideline. Those are the guidelines.

The Court: I think I can use the word determination.

The Witness: Yes.

• • •

Q. What effect, if any, does an order of detention under 739 have on the setting of the return date of the next proceeding or on the 90 days, if you prefer?

A. If a youngster is detained under 739, then you must put it down for a probable cause hearing within 72 hours, so you have a maximum of 72 hours before the case comes back to court again, that's the maximum. It could be less but that's the outside.

Q. Assuming that you have a probable cause hearing, are there other time frames in the statute which take over in terms of the commencement of fact finding?

A. Yes, there are, depending if the respondent is still in detention. In other words, if he was still detained after the probable cause hearing, then there are limits as to how long you can keep the youngster in detention before a fact finding hearing is held.

[462] Q. I show you just informationally, section 747 of the Family Court Act and section 748 of the Family Court Act and ask you whether or not those are the statutes which set forth the timeframe in which fact finding is to begin for children who are detained?

A. Yes, I believe those are the statutes, yes.

The Court: Well, Judge Quinones, I took down, I thought you said, that after a 739 hearing that fact finding can occur within several days or several weeks?

The Witness: It can, yes.

The Court: Now, then you said it has to occur within 72 hours?

The Witness: No, your Honor. Only if the youngster has been detained, if he is in detention. If he is paroled, if he is released under 739, then the period can be flexible.

* * *

Q. When you make a determination under 739 about events that may occur on or before the next return date, do you look to the ordinary course period which you indicated was up to 90 days, possibly, or do you look to [463] the telescoped periods that are provided with respect to detention?

A. I look to the ordinary, to the ordinary adjourned date. In other words, the date that usually comprises of several weeks. That is the period that I am usually concerned with.

Q. In order to come to a decision under 739 about whether or not there is a serious risk that the juvenile before you may commit another crime, before the return date, what aspects of the case do you look at?

A. Well, first we look at the allegations in the petition. At least I. I won't say we. I consider the past record of the respondent, if any. I consider the report and recommendation given by the CLO, that is the Court liaison officer who is representing the probation department. I consider any statements or other facts brought out by the attorney representing the respondent and any other facts and circumstances that I feel would help to make what I hope will be the right decision.

Q. Information about the home, is that normally available to you and, if it is, in what form is it available?

A. Information about the home can be obtained from interviewing the parent, if the parent is present. [464] It can be obtained from a probation officer if the youngster does have one. The court might be able to find that information by questioning the persons who are present.

Q. If you have information about the child's progress in school or lack of progress in school, do you consider that also?

A. Yes, the school situation is also considered.

Q. Is the school information usually available at the time you make your 739 determination?

A. Usually not unless we have a prior history with the youngster and that school information might be part of the probation report.

Q. Do you know whether or not that at least as to the nature of the allegations, the past record, if any, the probation report and such information as you are able to obtain about the home or the school, do you know whether or not those areas of the case are commonly considered by your colleagues on the Family Court bench?

A. Yes, I think they are.

Q. On what basis do you conclude that you think that those aspects of the case are common for consideration?

A. We talk with each other quite often. We have [465] lunch with each other very often and we express our ideas, our opinions and different matters that have appeared before us. It is a conclusion that I have reached from talking with my colleagues.

Q. Now, with respect to the aspects of the case that you mentioned, can you illustrate what about them that you look at in coming to a conclusion as to whether or not to release or detain? For example, what about the nature of the current charge is material to you?

A. I guess we all have our standards and we all have means of determining in our own minds the seriousness of allegations. For me, I categorize cases into two categories, two general categories. That is, allegations concerning acts against a person, acts of violence or acts that threaten harm to a person and then we have the allegations of acts against property. And as far as I am concerned, I think that the acts against person, acts of violence, are more serious, in general, than acts against property.

Q. So you look to the seriousness of the charges?

A. Yes, definitely. I look to the seriousness of the charge. I look to see whether anybody was hurt. I try to evaluate how strong the case is, in other words, what the probability is that the allegations will be [466] proven against the respondent. There are some cases that are stronger than others. And, if possible, I try to ascertain whether there were any injuries, the age of the complainant, the victim, I try to find as much about the situation as I possibly can.

Q. Do you look to the manner in which the acts alleged were performed or to the mental state, shall we say, of the child as best you can determine it from what's before you?

A. I believe that the nature of the allegations by themselves would tend to—what's the word—well, you might say that the nature itself might indicate a wanton disregard on the part of the youngster, either for the safety of an-

other or for the—if not only safety of the person, but also wanton disregard for somebody else's property. That is in that respect. If he or she has that little control with reference to the act here that might be indicative that the same lack of control could conceivably lead him to commit another act.

Q. Is the time of the day or night that the offense is committed, is that relevant to your consideration?

A. Yes.

Q. How and why is that relevant?

[467] A. Depending on the allegations, certain acts might be more harmful, might actually—what is the word—might indicate a bigger threat to society than others depending upon what happened with it.

If you set a fire at night, for example, it might be more dangerous than during the daytime conceivably when people are awake.

If you do something to somebody at night, perhaps the person might not get help quite as quickly as they might during the day when others might be around. That's just one passing situation. The time by itself may not necessarily be important, but it could be depending upon the circumstances.

[468] Q. Does the time that a juvenile is alleged to have committed an offense have any relationship to how he is doing in his home environment?

A. Well, it would seem to me that if somebody was accused of committing some act at 4:30 in the morning, it might show, number one, that there isn't sufficient parental control because I believe that that is a time when most youngsters should be expected to be at home in bed. So

that might be an indication of either lack of parental control or else of defiance on the part of the youngster with reference to the parental restraints.

Q. Let's turn to your examination or consideration of the prior record. What is material with respect to a child that has a prior record, if anything, in forming your judgment under Section 739?

A. What does the record consist of? What has he been accused of in the past? What kind of findings, if any, do you have in the past? What relationship does the past record have to do with the current allegations? Is it a similar type of allegations to those that he or she had in the past? It might show a pattern.

Q. Is the proximity or closeness in time of the past charges and the current charge of any relevance?

A. Oh, definitely so.

[469] Q. What relevance does it have?

A. If the past record indicates that the youngster has been continuously in a recent period been getting into trouble, that would be of more relevance with reference to 739 than if the last contact with the court had been several years, because it would show that—it shows a recent pattern of behavior on the youngster's part.

Q. Judge Quinones, I show you [Petitioners'] Exhibit 14-A, which is the transcript of a proceeding on July 5, 1978 in the Matter of James Peebles, held before you and I show you 14-B, Petitioners' 14-B, which is the petition of delinquency accompanying that proceeding and signed by, although it is somewhat unclear, one Francis Harrison.

Would you just look through those documents for a moment, Judge.

• • •

[473] Q. Judge, at the time you made this remand [of Peebles], was it within the capacity of a Family Court judge to remand a child to detention so that that child might get social [474] services or psychiatric services that he might not get at home if he were left in the community?

A. No.

> The Court: The answer is no?
>
> The Witness: No. No. I wouldn't be putting anybody to help him with something else. Very rarely.

Q. Does a Family Court judge have that capacity now; in other words, to put a child in detention so that he might get some social service or psychiatric service that he wouldn't get in the community?

A. Well, yes, but not this type of detention. The detention might be of another type.

Q. 739?

A. Under 739, no, I don't think so. That's not the purpose of 739.

Q. I call your attention, as I said, to page 5 of the transcript [Petitioners' Exhibit 14B] wherein you note "The mother herself thinks this boy needs help."

Could you tell us what you meant when you said, "This boy needs help"?

* * *

A. I am sure that—and this is from my own way of acting. I am sure I did not remand that youngster for [475] his own good, in other words, to help him. He might need help, but this remand was not for that help, not at that particular time, no. When I said he needs help, it

might be that based on what the mother had said, based on the allegations in the petition that he definitely would need help to help him out in the future, but it didn't mean that he was being remanded to get any immediate help, no.

• • •

[476] Q. Judge Quinones, when you remanded James [477] Peebles, did you believe that there was a serious risk that if released he would commit another crime?

A. Yes, I did.

Q. When you listed the aspects of the case that you looked to before for us and the illustrations, is it your opinion that any one aspect is controlling, such as prior record, or is it an amalgam of events that you looked to?

A. It's the whole picture. It is all the factors together, not any one factor alone.

Q. Do you have an opinion as to whether or not Section 739(a)(ii) can be appropriately applied to a child who has no prior criminal record?

A. Yes. Under certain circumstances, yes.

• • •

[479] Q. Judge, what is your opinion of the purpose of the detention that Section 739(a) [ii] authorizes?

• • •

A. I believe that the purpose of 739(a) is really the protection of the community. I believe that's the basic purpose for that provision.

Q. If that statute serves the interest of the child at all, in what sense does it serve the child's interest, if you have an opinion?

A. If it serves the child's interests at all, it would be the minimal benefit that while he is in detention, he is not

committing another crime; if that can be called a benefit to the youngster, but I don't believe that detention is actually for the benefit of the youngster, not under this statute.

I certainly would not remand anybody for benefit. Perhaps you might find a rare case where somebody might be so favorably or so shockingly affected by a short stay in Juvenile Center that that might turn [480] him around, but I don't believe that is the purpose he is put there, no. You don't put them in for their own good, I'm sorry.

Q. Are there any disadvantages or bad effects from the detention or the pretrial detention of a juvenile in your opinion?

A. Yes.

Q. What are they?

A. In my opinion, all [detentions], juvenile or adult, can have bad effects. For one thing, we are talking about youngsters of tender age. You are taking them away from their family. I mean, that's bound to have a psychological deterrent—not deterrent, detrimental effect on them.

Then again, Juvenile Center, as much as we might try, is not the most pleasant place in the world. If you put them in detention, you are liable to be exposing these youngsters to all sorts of things. They are liable to be exposed to assault, they are liable to be exposed to sexual assaults. You are taking the risk of putting them together with a youngster that might be much worse than they, possibly might be, and it might have a bad effect in that respect.

In other words, there is—any sort of [481] detention, as far as I am concerned, can have a bad effect, and this is something that can only be done—

Q. Can it have a good effect?

A. It might. It might, but again the effect might be that somebody might realize if I don't mend my ways I am liable to wind up in these situations more and more as I get along. It might be that. It might have the shock effect.

The Court: I don't know whether you are now, but you have spent two months in the intake part. How many of these matters do you have on the average of a day?

The Witness: Well, Judge, again, only using the figures that I got from the clerk, if you average last year's figures into the number of working days, the juvenile petitions add up to an average of about 30 a day, according to these figures. If we use these figures it might be about 30 a day.

The Court: When you are in the intake part you deal with this from, what, 9 or 10 in the morning until what time?

The Witness: Yes.

The Court: Till what time?

The Witness: 9:30 to 5, that's the usual day.

The Court: So you figure maybe you average [482] about 30 of these a day in the intake part?

The Witness: If these figures are correct and if we divide them by the number of working days, that's what I go by. I mean, some days more, some days less, but the average might be about 30.

By Ms. Gordon:

Q. Judge, from your experience in the criminal court of the City of New York in the arraignment part, approximately how long does an arraignment take?

A. The usual arraignment takes only a few minutes, the usual one. It's very cut and dried, in and out. If you have unusual circumstances, of course, it might take longer, but the usual arraignment is fast.

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[484] *Cross-examination by Mr. Guggenheim:*

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[485] Q. In your opinion, do your colleagues utilize the identical standards that you do in making a decision to parole or remand?

A. I don't know whether they use the identical standards. I know that they use the basic standards that I outlined before.

Q. Would you regard these standards as subjective?

A. The standards?

Q. Yes.

A. No, I don't believe the standards are subjective. Possibly it might be subjective in applying the situation to the standards or trying to fit the facts presented to the standards. That might be subjective, but the standards themselves are not, no.

Q. Is it your opinion that the standards are applied in a subjective manner on occasion?

A. Yes. I believe so, yes. I believe at all times it has to be subjective.

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[486] Q. Is it your opinion that race is ever taken into account in making a decision to parole or remand by certain judges?

A. I know of no judge that takes that into account, or at least if they do, they have never told it to me, let's put it that way.

Q. Do you know if certain judges take into account [in] the decision to parole or remand the fear on the judge's part that the child will commit another crime which will then be reflected in a newspaper account, perhaps, that the judge released somebody who has committed a crime?

A. I think that judges are human beings just like anybody else and I believe that one of the factors that does influence some judges is the newspapers and the articles in the newspapers. Yes, I believe that that could be one of the considerations.

Q. You indicated in your answers in your direct examination that the operative period of time within which you are making the prediction that the child will [487] engage in criminal conduct is not the three or six days that the child may spend in detention, but is the several weeks leading up to the trial itself. Is that right?

A. That is correct.

Q. Is it your opinion that you are able to refine your ability to make that prediction down to a closer end; that is to say if the child were held within only five days you would be more likely to release than if it were to be held in five weeks where there would be a longer period of time within which it [is] possible that the child would engage in criminal conduct?

A. Well, sir, I will answer you this way: In cases where there is a serious doubt in my mind, in the cases where I feel that the youngster might commit another crime, what I will try to do in those cases, in those very close cases, I will try to give as short a date as possible.

For example, I might try to put the case on within a week, within five days to try to minimize that situation, and at the same time not have to remand the youngster during that period. I will try to cut down the period if I think that that is the case.

So definitely the time factor is one of the things that I keep in mind.

[488] Q. Do you hold any degree other than a law degree and a baccalaureate degree? Do you hold a baccalaureate degree?

A. Yes.

• • •

Q. What was your major in your undergraduate work?

A. Sociology.

• • •

Q. You have made a prediction that a child will engage in future conduct even in cases where a child has never before been arrested except for the act that has brought him before you at that time, is that correct?

A. That is right.

Q. You make that prediction in order to protect the community from his getting into further difficulty and committing crime, is that right?

A. That is correct, yes.

Q. Let me ask you a question that I have thought about for a long time in this area. If the case comes to trial and

is ultimately dismissed, why is the juvenile [489] then released?

A. Because we have no legal reason to hold him because he has been found innocent.

Q. Does it change your your assessment that you made earlier that he is dangerous to the community?

A. It would have to.

Q. It does?

A. No, that's not the answer. In some cases perhaps you might still think that the youngster is dangerous, but for whatever reason, either he has been found innocent or he has been released, but [it does] not necessarily follow[ ], that because he is found innocent that he is not dangerous. Not necessarily so.

• • •

Q. Let's assume a case in which a juvenile comes into court for the first time, never before been arrested, [490] is arraigned, the Judge makes the decision that the child is likely to commit another crime, the charge is robbery, comes on to trial and the Judge, after a hearing at which the eyewitness testifies "I have made a mistake in this case. The juvenile involved before the Court did not commit the crime. I'm sorry."

Would that have any bearing on your initial assessment that the child was dangerous to the community?

A. Well, this is beautiful hindsight. I have to make the decision before we have those facts.

Q. Is the answer yes? Would it change your assessment?

A. If he hadn't committed the crime at all?

Q. Yes.

A. Of course.

Q. Is it true that part of what you consider on the likelihood to commit a crime, that the person committed the crime that brought him to court?

A. I said that one of the things that I consider is the probability or the strength of the case against the respondent, yes. If I can try to ascertain that, yes.

Q. If you can try to ascertain that—

A. Yes. And there are ways to do that.

Q. You can't always do that, can you?

[491] A. Of course not, no. You can't predict, no, not at all.

Q. In fact, with the utilization of the police liaison officer in Kings County, isn't it true that in the vast majority of cases which come into intake, no person is before the Court with direct personal knowledge of the underlying charges?

A. I don't know about the vast majority, but certainly a large number of the cases fall into that category.

• • •

Q. In those cases in which no person with personal knowledge is before the court, isn't it the fact that of those cases, many of the time the court does not even see or personally read the supporting affidavits?

[492] A. Yes. That's possible. But then the supporting affidavit doesn't give much information most of the time, either.

The Court: You are getting [me] a little confused now. I had understood that the supporting

affidavit, at least somebody who indicated knowledge of the crime, was essential to a 739 proceeding.

The Witness: Well, Judge, actually I believe—I don't know how right this is. I don't believe that you can draw or you can have a valid petition before you if it is based merely on information and belief.

In other words, the supporting affidavit is usually a pro forma affidavit that says that the person who does have actual knowledge has read the [petition] and attested to the truth of it. That's what I am saying. Usually it [the affidavit] doesn't give much additional information. It's only one affidavit asserting as to the truth of allegations drawn by some other person.

Q. Would you ever detain a child who has never before been convicted of a crime, who is before the court on a property offenses in the second category of your own definition, based on a belief that if released the child would engage in further criminal conduct?

A. On a property crime? Yes, that is possible [493] also. It is not usual. I don't think I would usually do it, but I can see where a situation would come up where it would be possible.

* * *

[497] Q. Under the circumstances would you detain a juvenile who has never before been convicted of anything, who is accused of a property crime only?

A. That's a very difficult question to answer. It would depend on the facts as brought forth. In other words, are

you asking me can I conceive of any situation where I would remand somebody on a property crime merely because this was the first time?

Q. Yes. You have already answered the question yes. Now I am asking you under what circumstances you would do it.

A. Every case has to be decided on its own merits. It could be based on information in the probation report, it could be based on many things.

It could be based on information from the parents, it could be from the community. Anything at all that might lead me to think that there is a great risk that this youngster would commit another crime if released.

Mr. Guggenheim: I would like to have these documents marked as a Petitioners' Exhibit [43] for [498] identification [ ]. A is a transcript of a hearing and B, C and D are documents relating to that hearing.

(Petitioner's Exhibits 43-A, B, C and D marked for identification).

Q. Judge, I will ask you to read this to perhaps refresh your recollection. It's a transcript in the Matter of Douglas McLaughlin, Kings County Docket Number D3773 of 1978. You presided over an intake hearing and the transcript is three or four pages and I would ask you to look at that now.

A. Yes.

Q. Have you read the documents?

A. Yes, I have.

Q. Do they [refresh] your recollection at all; do you remember anything about this case?

A. Individually, no. Other than what I just read now, no.

Q. That was a case, was it not, in which a child had no previous convictions, was accused of a burglary and you ordered him in pretrial detention?

A. That is correct. What was the date of that, I don't recall it again.

Q. July 7, 1978.

A. 1978, okay.

* * *

[505] Q. How can you account, Judge, for the fact in a case where the initial reaction of the court is to detain a child based on a prediction that he will commit another crime or crimes if not detained with an ultimate disposition in the case of probation?

A. Probation indicates that there has been a finding in the case. You have to have a fact finding otherwise probation wouldn't be discussed.

Now, when it comes to the dispositional hearing, the main purpose of the dispositional hearing or [506] the main thrust would be the best interest of the child. In a dispositional hearing you are supposed to keep the child's best interest at heart and I think that—well, speaking for myself, I think that any kind of detention at a dispositional hearing is a very harsh solution to the problem and you will look for the least harmful or to the most beneficial disposition at dispositional hearing keeping the best interest of the child in mind and many times that is probation.

Q. So, in other words, at the outset of a hearing the court is more likely to react harshly, is that right, and at the end of the hearing is more likely to take into account the child's own needs?

A. No, I can't say that. You can't draw that conclusion. In some cases it might appear that way but I wouldn't say that you can make a general statement such as the fact that there have been many youngsters who have been paroled at the beginning and wind up being sent to Division for Youth at the dispositional hearing because that happens to be in the best interest of the child.

> The Court: Don't you have or do you have different facts before you at the dispositional hearing than the fact finding?
>
> The Witness: No, the dispositional hearing is [507] the hearing after the fact finding. Shall we say the sentencing part, that's what we call the disposition. Yes, there are different—there is different information before you. You have a complete, up to date probation report. You might have psychiatric and psychological reports. You have more. It is more complete than most 739 hearings and it is geared especially to this situation. It is prepared especially for this fact finding, this dispositional hearing. It is more complete, usually. Again, in disposition, you are talking about a long range program for the youngster.
>
> • • •

Redirect Examination by Ms. Gordon:

Q. At the dispositional hearing, Judge Quinones, do you take account of the fact that a child who has been previously remanded has already spent some time in a restrictive environment in coming to your disposition?

A. Yes, that is taken into consideration also.

Q. In addition to the fact that you have the more up to date investigation and report and psychologicals for a child coming up for a disposition, is it possible [508] that also in the intervening time, that is, from a 739 detention until a disposition, that the facts, some facts relating to that child may have changed?

A. Yes. A lot of changes might have taken place. The family might have moved out of the neighborhood where this activity was taking place. There might be a change in the family composition itself.

We have a much more complete probation report which might bring out facts, bring it right up to date. Perhaps in the interim the youngster has received some additional aid.

Many times it is done by the Legal Aid Society itself who puts their social workers to work with the child or maybe another neighborhood agency has intervened in the present time. There might be several months between the act itself and the dispositional and during that time many factors might come into play that did not exist at the time of the 739 hearing. School. We might have been able to contact school. We might have school records that might not be available immediately in a 739. It is a much more complete picture of the youngster, usually.

• • •

[511] Q. I would like to know, Judge, since we do have a couple of burglaries here and an arson, whether or not

you consider in your own understanding a burglary or a arson to be a property crime or a crime against the person?

A. Essentially I believe that they are crimes against property. They could turn into situations where somebody is hurt, but essentially they are property crimes, I would say.

• • •

[512] The Court: All right. I have a question and I'm just not sure that it is fair to ask it, though.

I am very disturbed by this statute and it seems to me that it tilts the whole concept of the criminal justice system from being innocent until you are proved guilty from the other way, as far as juveniles are concerned. Actually what I would like to know, and you don't have to answer it if you think it is unfair, particularly in light of what has been brought out about the greater information that you had at the dispositional hearings, as to whether you really feel that judges at 739 hearings have the sufficient knowledge and information to make the kind of prediction that they are required to do by the statute?

The Witness: Well, Judge, that is a subjective question and if you begin with the premise that any detention is undesirable and you work against that, in other words, first you start with absolutely no detention and you let the facts and circumstances overcome that strong presumption, then I find that in my experience in New York City we do have situations where if for no other reason but for the protection of the community we must have some means in certain cases for [513] detention. But starting out with the premise that detention is an undesirable thing.

• • •

Testimony of Ralph E. Kelly
(Excerpts)

[515] RALPH E. KELLY called as a witness by [the State], was duly sworn and testified as follows:

Direct Examination by Ms. Gordon:

Q. Mr. Kelly, by whom are you employed?

A. New York City Department of Juvenile Justice.

Q. What position do you hold?

A. Deputy Commissioner for Operations.

Q. What are your responsibilities as Deputy Commissioner?

A. As Deputy Commissioner I am responsible for all the programs and operations that the department runs [516] which include nonsecure detention, secure detention, training, court service programs.

* * *

Q. How long have you been with the Department of Juvenile Justice?

A. Since its inception in July of 1979.

Q. What undergraduate or graduate degrees do you have, if any?

A. I have a bachelor's degree in sociology from the University of Pittsburgh, a masters degree in child psychology from the University of Pittsburgh and a [517] certificate of child welfare development from St. Francis College.

Q. Would you briefly describe your professional experience before joining the Department of Juvenile Justice in 1979?

A. Yes. I have about 20 years of child welfare experience. Prior to becoming Deputy Commissioner for Juvenile

Justice, I was a senior management consultant for Kirschner Consulting Company in Washington D.C. We worked for HEW in consultation and management for a variety of social services throughout the country. Prior to that I was a freelance consultant here in New York City in the metropolitan area.

From 1974 through 1977 I was executive director of St. Agnes Home and School for children. St. Agnes is a large multi-functional child caring agency serving more than 350 children and families who are emotionally disturbed and predelinquent and delinquent.

Prior to that I was director of Holy Cross Campus, residential treatment center for delinquent boys and girls in upstate New York, [s]erving youngsters who are primarily from the New York City and metropolitan area. These youngsters are both emotionally disturbed and delinquent.

[518] Prior to that I was in St. Vincent's Hall in Brooklyn. I was director of child care. Prior to that I was counselor, student, et cetera.

• • •

Q. Are you a member of any professional organizations currently or could you tell us what organizations that you belong to currently that you believe are significant?

A. Currently I'm president of the National Organization of Child Care Workers, executive treasurer of the New York State Association of Child Care Workers, a fellow of the American Ortho-Psychiatric Association, a member of the National Association of Social Workers and a variety of other youth related organizations.

• • •

[520] Q. What types of detention facilities does the department operate in New York City?

A. Primarily two types. Secure detention which is Spofford Juvenile Center up in the Bronx and nonsecure detention which consists of 18 beds in foster boarding homes, two group homes or, actually, agency operated boarding homes would be the technical term for them and two group homes under contract with Pius XII School. In total we have 56 beds in nonsecure detention and a couple hundred beds in secure detention.

• • •

[524] Q. Would you please just describe briefly what the nonsecure, NSD program is, starting with the quality of its restrictiveness, if it has such a quality?

A. Yes. Actually, nonsecure detention is the opposite of secure detention. It means that the youngsters while they are remanded to the custody of the Commissioner of Juvenile Justice are under our custodial jurisdiction and are living in a setting that is open. By open I mean it is a setting in the community. There are no locks, no bars, there are no security officers on the door. The youngsters virtually are subject to the authority of the staff and are virtually free to come and go. It certainly is not a place that is unsupervised. The kids get supervision from the staff but it is an open facility, as open as one could possibly be.

• • •

[528] Q. And I ask you whether or not that part 180 of the state regulations provide the minimum standards for secure and nonsecure detention facilities that

come under the jurisdiction of the Department of Juvenile Justice?

A. Yes, they do.

Q. With respect to the secure and/or nonsecure detention facilities that the Department of Juvenile Justice operates, are they under any other order or [529] mandate other than the state regulations part 180?

A. Yes. There is the Martarella decision from 1974 which we are bound by.

• • •

[530] Q. Is there a screening unit at Spofford?

A. Yes, there is.

Q. What is the purpose of the screening unit?

A. The purpose of the screening unit is to attempt to divert youngsters who have been arrested by the police after Family Court—when Family Court is not in session, to divert as many youngsters as possible out of secure detention either into nonsecure detention or return them to their home so they can return to court the following day.

• • •

[531] The Court: • • • What does the assessment unit do?

The Witness: The assessment unit operates in the family courts with youngsters remanded in our custody. When a youngster is remanded to us, we have social workers in each of the family courts. They make an assessment of that youngster based on as much previous [532] information from probation they can get, as much information around the current petition they can get and then their own

professional judgment. That decision determines whether we place that youngster in a secure facility such as Spofford or in one of our nonsecure facilities.

• • •

[533] Q. Commissioner Kelly, in answering the Judge's questions, you indicated that the court assessment unit makes a determination as between secure and nonsecure detention following a remand of the child by the Family Court. If the order, the judge's remand order [says] on it remand JC [Juvenile Center] or remand Spofford, does the court assessment unit still make the determination as between secure and nonsecure detention?

A. Yes, they do. They are supposed to certainly consider the judge's endorsement, but the assessment unit is clear about the fact that the department exercises complete responsibility and authority to place youngsters within the detention system to where we see best.

• • •

[534] Q. I show you [State's] Exhibit B-2 [and] the overpage and I ask you whether or not that is the form in use currently by the court assessment unit?

A. Yes, it is.

Q. And I show you the document following which is [State's] Exhibit C consisting of three pages and ask you whether or not that is the document currently in use that defines the procedures that the court assessment unit follows?

A. Yes, it does.

Q. I call your attention to the caption of the document which says "Assignment Unit Procedures".

Is assignment and assessment essentially the same term?

A. It means the same thing. Some of these documents need some up dating but it means the same thing.

• • •

Q. On [State's] Exhibit C, Commissioner Kelly, down at the item B where it says PINS or delinquency [535] allegations.

Are PINS allegations any longer relevant in this context?

A. Our department has no jurisdiction over PINS.

Q. Does this court assessment unit have any jurisdiction over PINS?

A. None whatsoever.

Ms. Gordon: Your Honor [State's] Exhibit I for identification.

Q. I show you Defendant's Exhibit I for identification entitled "Guide for Preparation of Intake Study for Detention Care" and it is dated January, 1975, and ask you whether or not this is the current guide for the preparation of the court assessment forms?

A. Yes, it is.

Ms. Gordon: I offer it in evidence, your Honor, as [State's] Exhibit I.

• • •

([State's] Exhibit I was received in evidence).

• • •

[537] Q. What kinds of personnel staff the court assessment unit in the five boroughs?

A. Social workers. All of them have at least their bachelors degree and all of them have several years experience. Their supervisor is a licensed social worker with a masters in social work.

Q. Since you have been Deputy Commissioner, have you had occasion to investigate the effectiveness of the court assessment unit in making decisions about children as between secure and nonsecure detention?

A. Yes. It's been a source of continuing re-examination.

Most recently we commissioned a task force to kind of re-assess or re-evaluate the JDs in Spofford. We did this back in January and we evaluated about 40 juvenile delinquents, of which the results of—would you like to hear the results of that study?

Q. Yes. If you have notes you may use them to refresh your recollection.

A. On January 7 the staff took 40 juveniles who were currently being held for Family Court and were in secure detention. They assembled all of the records and the material related to those youngsters.

By the time they were ready to do a day long [538] analysis, which took place on January 16, 18 of the youngsters had already become ineligible.

Now, the purpose of the study was to find out, again to re-assess those youngsters in terms of trying to put some of those kids into NSD, if possible.

By the 16th, 18 of the 40 had become ineligible in the terms six had been transferred to DFY on an interim basis, during the interim basis, four had already been transferred to NSD, because we have a mechanism that works automatically in terms of re-assessing youngsters. So four had

already, through the normal mechanism, gone to nonsecure detention.

Seven had been released from our custody through the courts and one had become a JO case.

• • •

The remaining 22, they were assessed against our standards as well as some standards that were issued by the national advisory board, which is [entitled] standards for juvenile's eligibility for admission to secure facilities. Basically of the 22, 17 met even those standards and belonged in secure detention.

The remaining five, they were broken down as follows: One had numerous cases dating back to 1973 [539] and '75, '76 and '79 both here in New York City as well as in Washington, D.C., and currently he was refusing to talk or even give his current whereabouts.

Another youngster had been known to our NSD program. He had absconded three times from nonsecure detention. He had also caused quite a bit of difficulty to the other youngsters there and on one occasion he had placed a match, a lit match to the neck of another youngster.

> Mr. Guggenheim: I object to this answer and move to strike it on the grounds of relevance. There has been no testimony that this is a profile of all of the individuals in the facility and to just randomly select individuals and talk about them I think serves no purpose in this case at all.
>
> The Court: You are rather long in making the objection, Mr. Guggenheim.

• • •

[541] The Court: I think my whole feeling is that this has nothing to do with it, but since Mr. Guggenheim has not objected to it until some examples have been given, you may proceed.

I think it's all irrelevant and I am probably not going to consider it, but you may proceed with it.

A. The third youngster of the five that were left had 36 prior arrests, mostly stealing from out-of-state trucks and on most occasions the drivers never appeared in court so they were never able to get a conviction.

Of the other two youngsters, there was no appropriate NSD facility available. Breaking those two [542] youngsters down and saying [ ] we would have placed them had we had a different kind of facility, one youngster was a boy who constantly exposed himself and masturbated in front of every woman plus instigated a lot of fights.

• • •

[543] A. And the other youngster, the fifth youngster, was a girl who had a drug problem, had been arrested for possession of a loaded gun. If we had a group home for girls we would have placed her in a group home, but we could not find a foster home that would take her.

• • •

[544] The Court: The people in terms of this study, [545] there has been no effort to isolate those that are remanded under I think they call it a 739 hearing, after a 739 hearing, but before fact finding determination; you don't know whether these are covered by that?

The Witness: I couldn't be sure.

• • •

[555] Q. Do you have any information on the average length of stay of a child at Spofford?

A. Yes, I do.

Q. What is the average length of stay?

A. From a period from July through February, it's about nine days.

The Court: That was July of '79?

The Witness: Yes.

• • •

[561] *By Ms. Gordon:*

Q. Do you have any information, Commissioner, on the recidivism rate of admissions to Spofford; that is, children who have been admitted to Spofford more than once for the same time period?

A. Yes. For this period the recidivism was 52 percent.

The Court: By that, as I understand it, your 52 percent of the population between July 1, 1979 and February 29, 1980 had been there before?

The Witness: Had been there at least one or more prior days.

Q. Is that times or days?

A. Prior times.

• • •

[567] Q. In terms of housing the children at Spofford, are they grouped in any way by age or behaviors?

A. Yes, they are.

Q. Would you please just tell us how that works?

A. Well, we have dorms for younger children, middle age children and older children and then we make some

determination in terms of the youngster's aggressiveness.

I mean, you could have a 13 year-old youngster who is very large and very aggressive and we might house him with kids who are 15.

[568] Vice versa, we might have a 15 year-old youngster who is very small, very fragile and we would put him with our youngest population.

Q. You mentioned dorms. Do the children sleep in a dormitory or what is a dorm?

A. A dorm is a living unit. A living unit consists of a recreation area that has a TV in it and some lounge chairs and some games of various types. It has bath—toilet facilities as well as shower facilities and then it has individual rooms for each youngster.

Q. The individual rooms for each youngster, are those the sleeping accommodations and places for his personal effects?

A. The kids don't have very many personnel effects, but that would be a place for them, those that they have.

Q. Do children at Spofford wear uniforms?

A. No, they do not.

Q. Are there requirements as to their clothing?

A. Yes, they are required to wear the clothes issued by the institution. Boys are. Girls keep their own clothing.

Q. What kind of clothing is issued by the institution to boys?

[569] A. Dungarees, sport shirts, T shirts, jackets, sneakers.

Q. Are there any uniformed guards on the interior of Spofford?

A. Not on the interior. The interior is run by juvenile counselors who are not guards or correction officers.

We have special officers who take care of the front of the building, the points of entrance by visitors and other kinds of guests, and they wear a uniform.

> The Court: Are these dorms separate buildings?
>
> The Witness: They are all in the same building. You might have two dorms on a floor side by side, but there are separate entrances and if I am in one dorm and you are in the other, you and I are completely separated.

By Ms. Gordon:

Q. In terms of the relationship between the dorm unit and the activities at the facility, does the child proceed with his dorm unit or does he proceed with other dorm units?

A. Most of the activities are done by dorms.

Now, in certain areas you might have two or three dorms in the pool, for example, two or three dorms [570] in the gym or two or three dorms in the yard, but most of the activity is done [by dorm].

Education has changed more recently so that's more individualized than done in dormitory groupings.

• • •

Q. Commissioner, do you think that there are any positive effects of pretrial detention of juveniles?

A. There are some positive effects that some of the kids get when they are in Spofford.

Q. Could you tell us what they are?

A. Well, we have social workers that counsel the kids. We have juvenile counselors that do counseling. [571] We have recreational programs.

Many of the youngsters have never been to school in any consistent way so they get schooling while they are there.

Q. Are there any detrimental consequences to pretrial detention?

A. There [are] detrimental consequences to institutionalization to most people and kids are no different. Certainly it's detrimental when you are in such a large institution such as Spofford as opposed to a smaller institution.

• • •

[571] *Cross-examination by Mr. Guggenheim:*

Q. Commissioner Kelly, what is the size of the staff population at Spofford?

A. Approximately 350.

Q. What is the size of the staff population that works directly with the youth, the counselors I think was the term you used.

A. Right. There are two counselors on each dormitory at all times and the population of a dormitory ranges from 16 to 24, depending upon the size, the number [572] of youngsters in the house.

• • •

[573] Q. There has been reference made in your direct examination to the Division for Youth regulations concern-

ing juvenile detention facilities. You are familiar with those regulations?

A. Somewhat.

Q. Are they applicable to your facility?

A. Absolutely.

Q. Do those regulations contain any maximum number of staff to inmate ratio?

A. Yes.

Q. Do you exceed that?

[574] A. At the moment we are exceeding it, that's correct.

• • •

[575] Q. Do you have any problems with assaults by inmates on staff at Spofford; any problems with assaults by inmates on other inmates?

A. Yes.

[576] When you say problem, we have incidents of those.

Q. Are those incidents at all related to the fact that you have convicted juveniles housed there?

A. No, I don't think so. I think they are related to other factors.

Q. What are those factors?

A. Oh, I think one factor would certainly be when we inherited Spofford and even to this day, we don't have the kind of program that we think ought to be going on there. I think size is another factor that causes many of those kinds of problems.

Q. Are you familiar with the term "room confinement"?

A. Yes.

Q. Are you familiar with the term "group confinement"?

A. Yes.

Q. What is room confinement?

A. My understanding of room confinement is when a youngster is put in his room and told to stay there for a period of time.

Q. Is anyone else allowed in the room during that period of time?

[577] A. Usually not. Notwithstanding staff.

Q. What is group confinement?

A. When a group of youngsters are confined to their dormitory.

Q. If group confinement is imposed, is it imposed on all inmates housed in the particular dorm?

A. When it is used, it would probably be used for the entire dormitory.

Q. Is it usually used as a punishment for what some boys have done justifying the use of it?

A. Not necessarily a punishment. It sometimes is used as an alternate to keeping the kids in an area where the staff can work with them and counsel them. Sometimes you have groups getting completely out of hand and may be wanting to get into a fight with another particular group and both groups might be sent to their dormitory, but not so much as a punishment.

Q. Sometimes is it used as a punishment?

A. Sometimes.

Q. And in fact some of the boys that would be punished in this way may not have actually done anything except

live on the dorm in which a problem developed, is that right?

A. If group confinement was used in some ways [578] that it may have been used, yes.

* * *

Q. * * * With whom, if anyone, do the assessment workers interview or talk in making their determination whether or not to recommend nonsecure detention?

A. Well, they talk to the youngster, they talk to the probation officer and many times they talk to the law guardians.

* * *

[584] Q. Do the screening workers interview the juvenile when they come to Spofford?

A. Yes, they do.

The Court: Are these social workers like the assessment unit workers?

The Witness: No, they are in the juvenile counselor series in terms of their title but they are experienced juvenile counselors and they are supervised in that function by a professional social worker.

The Court: Unlike the assessment unit, they are not—

The Witness: Unlike the assessment unit, they are not social workers, but they would have, for the most part, extensive experience as juvenile counselors.

Q. What do they discuss with the juvenile in the [585] interview?

A. There is an interview guide that they go by and they discuss a variety of things related to the youngster's past and how the youngster got into difficulty.

Notwithstanding the scoring mechanism on the screening instrument, they are trying to make a professional judgment as to whether this youngster can go into a holding facility rather than Spofford, which is an open facility, a[ ] group home where he would live until court is in session or whether he can go back to his own home and stay there until court is in session.

Q. One of the things I take it that is discussed is the circumstances leading to the child's arrest?

A. Yes. They would discuss that.

Q. Would they ask the juvenile what he or she was doing at that time?

A. In terms of—they might ask that question, yes.

Q. Might they ask if they committed the act with which they are accused?

A. They wouldn't ask from the point of view of asking whether the youngster is guilty or not guilty. They might ask a question which might relate to trying to [586] make a determination as to whether the kid was a follower, or does he get easily led into situations, et cetera, so forth. But they would not be interested in getting the kid to admit guilt or not admit guilt.

Q. But they might ask what the individual was doing which led to the person's arrest and whether the person in fact was culpable and responsible for the act, right?

A. They might. I mean—you know, they might ask that.

Q. If after the interview it is determined that the juvenile was the leader rather than the follower in the commission of an act, might that have an adverse bearing on the recommendation to release?

A. It would have a bearing.

There are a number of factors that come into play. For example, the youngster might be the leader, but he might also come in with an adult. There might be an adult in his life who can guaranty his reappearance back in court.

The primary concern of the screening staff is two-fold. One is that the youngster can reappear in court when court is in session.

Q. And the second?

[587] A. The second is that the youngster is not likely to go out after the police have just arrested him and brought him in and go right back to the same area and get arrested again for another crime.

Q. When I use the term "likely to commit another crime" in the context of the assessment unit, you said you didn't know what I meant?

A. The way you phrased the question, I didn't understand it.

Q. But you are familiar with the concept of someone who is likely to commit a crime if not detained, aren't you?

A. I am familiar with the fact that if the staff that is making those judgments feels based on their own professional judgment and based on as much information [as] they have at their disposal that this youngster under our jurisdiction is likely to get into more difficulty, then they have to make certain decisions.

Q. Part of the information utilized to come to that informed judgment is an investigation of what the child was doing which led to his arrest, right?

A. Part of the information of the screening unit might be that, yes.

• • •

[588] Q. Turning your attention to the assessment unit worker's function and process, does a similar interview [to the screening interview] take place with the juvenile after the court has ordered detention?

A. That's correct.

Q. And similarly one of the concerns of the assessment workers is the likelihood that the child will commit a crime if placed in nonsecure detention?

A. One of the factors that is considered along with many other factors is just that.

Q. And the assessment worker is likely to ask the juvenile, is he not, questions concerning the charges that brought the juvenile to court?

A. Yes.

• • •

[591] The Court: Well, when the assessment unit gets it, the court has made that determination that he is likely to commit a crime, hasn't [it]? When it comes to the assessment unit, it is with that determination by the court. They don't have to make it anew, do they?

Mr. Guggenheim: The facts of this case, I think, are that the assessment worker makes another determination of risk to the community?

The Court: Does he in that situation?

The Witness: As I said before, the assessment worker takes the fact that the youngster may commit another crime as one of the factors that they use in

[592] their overall decision as to whether the youngster goes to secure or nonsecure. But that fact alone would not be the determining factor.

Q. But it is taken into account?

A. Everything is taken into account. Everything we know about the youngster is taken into account.

• • •

The Court: You mean some of these youngsters who the court—I want to try to get this straight.

• • • [T]he court has made the determination that in your judgment is not determinative [593] of where he goes in terms of secure or nonsecure?

The Witness: Right. The court has only said he goes into detention.

• • •

[595] Q. • • • At the interviewing stage—I will separate them as well. At the screening unit, when brought to the [596] juvenile center, does the worker tell the juvenile that, "Before I say anything to you, before we have this discussion, you have a right to bring in an attorney to speak with"?

A. No.

Q. At the court assessment unit interview stage, same question, does the worker inform the juvenile that he has a right to bring in an attorney?

A. No.

Q. In fact, by the assessment unit stage an attorney has already been assigned to represent the juvenile, isn't that correct?

A. That is correct.

Q. At the screening unit stage no such counsel has been assigned?

A. That is correct also.

Q. You talked for a short time on your direct examination about adverse consequences of detention. One of the adverse consequences of detention, is it not, that the juvenile who is detained by the police is more likely to be detained by the court, isn't that correct?

A. I don't know. We don't have in the department any statistics to refute or support that.

The Court: What about the notes that your [597] people make—

The Witness: Did you say the notes?

The Court: Or the forms [from the screening unit and the assessment unit], are there any situations in which they have been subpoenaed?

The Witness: Not to my knowledge they haven't.

The Court: Are they kept secure from prosecution?

The Witness: None of our material can be given to anybody without a court order. It would require the court to come in and get that.

• • •

[605] Q. When juveniles are brought into Spofford, are they ordered to remove their clothes and be subject to a strip search?

A. Yes, they are.

Q. Does that happen each time they enter the facility?

A. No. Youngsters who go to court during the day and come back to us don't get strip searched.

The Court: What does the strip search entail?

The Witness: It entails removal of their clothing.

The Court: And a visual inspection?

The Witness: Yes, visual inspection.

The Court: Does it involve examination of cavities?

The Witness: No, it does not.

Q. Are they strip searched after they have visitation with relatives or persons?

A. Not necessarily strip searched. They can be depending upon the person in charge of the visitation believing that there may be reason that the youngster has something. But the staff tries to maintain as much visual observation of the visiting to avoid that.

Q. Are the rooms of juveniles searched at [606] Spofford?

A. Yes, they are.

Q. Daily?

A. Not daily, no.

Q. Are they searched in the presence of the juvenile when they are searched?

A. Not all the time.

• • •

[607] Q. When they move about within the facility, do they walk in lines?

A. Yes, they do, for the most part.

• • •

Direct Examination (Resumed) by Ms. Gordon:

Q. Commissioner, just so we are clear, I take you to [State's] Exhibit B1 and ask, is that form consisting of three pages the form used in the screening unit at Spofford?

A. That's correct.

[608] Q. I would ask you to turn over to page 3 of that form and in subdivision A, if you go down one line or two lines, you find the word "serious", and it has the weight of a point.

What does serious mean?

A. Serious means that it is a felony.

Q. I ask you to go down to subdivision E where it says "PINS warrant". Is that applicable any longer?

A. It is no longer applicable, no.

• • •

[611] Q. • • • You mentioned earlier in the course of your direct examination that you had had a review of the assessment unit's effectiveness as against another standard. I show you [State's] Exhibit M for identification, being Section 3.152, "Criteria for Detention in Secure Facilities-Delinquency" from the [612] National Advisory Committee on Standards for the Administration of Juvenile Justice, 1976, and ask you whether or not that was the standard that was used for the January, 1979, evaluation of the assessment unit?

A. Yes, it was.

• • •

[613] *Redirect Examination by Ms. Gordon:*

[614] Q. On one occasion the Court inquired of you whether the form that is the screening unit form and the court assessment unit form can be made available to the court and I believe you answered him it would only be by court order, is that correct?

A. That's correct.

Q. Now, I ask you whether or not the forms, that is completed forms with respect to particular juveniles, or any information gathered in the course of either the screening unit investigation or the court assessment unit investigation is provided to personnel other than personnel within the Department of Juvenile Justice on a regular or even an occasional basis?

A. No, it is not.

Q. With respect to the under-care staff of either a secure detention facility or a nonsecure detention facility, and by under-care staff, I mean the people that work with the children, are any of those people ever informed of the charges against the child, the current legal status • • • of the Family Court proceedings [against] the child, the nature of the charges, that kind of information?

• • •

[615] A. In general, the juvenile counselor which is the bulk, as well as the house parents, they are called house parents in nonsecure detention, do not know the charges that the kids are there for. They don't know by getting a form that says this kid is here on this kind of charge.

Very often the kids volunteer information and it comes out that way.

The general theme is to try to keep it away from people who don't need to know about it.

• • •

Q. I take you to the regulation that Mr. Guggenheim referred to in the course of your cross-examination, namely 180.7 and you have to go down to (d) of the state regulations and I direct your attention to subparagraph 3-[ii], "there is a serious risk that before the petition is filed the child may do an act which if committed by an adult would constitute a crime".

Do you believe that there are children, juveniles, who fall within that category?

[616] A. Yes. There are some youngsters who fall within that category.

• • •

Testimony of Hon. Margaret Driscoll
(Excerpts)

[629] MARGARET DRISCOLL, called as a witness by the State, was duly sworn and testified as follows:

Direct Examination by Ms. Gordon:

Q. What's your current position?

[630] A. I'm a judge of the Connecticut Superior Court.

Q. And since what date have you been [a] judge of the Superior Court?

A. Since July 1, 1978.

Q. What judicial positions did you hold prior to going on to the Superior Court, if any?

A. I was a judge of the Connecticut Juvenile Court from 1960 to '78 and Chief Judge of that Court from '76 to '78.

Q. What was the occasion for the change in your assignment from the Juvenile Court to the Superior Court, if there was such an occasion?

A. The Courts merged.

Q. You weren't promoted?

A. I didn't think so.

The Court: I'm not familiar with Connecticut state system. Is Superior Court a trial court?

The Witness: Yes, it is the highest trial court and now the only one.

The Court: And in the Juvenile Court, were you at any particular location?

The Witness: The Juvenile Court before the merger had three districts with two judges in each district. My district was Fairfield and Litchfield

[631] counties which was the whole western side of the state from the Massachusetts line to the New York line.

Q. Did your experience in the Juvenile Court prior to 1978 include the hearing and determination of all aspects of proceedings against juveniles accused of crimes?

A. Yes.

Q. Does the jurisdiction of the Superior Court now extend to the hearing and determination of proceedings against juveniles accused of crimes?

A. Yes.

Q. Since you have been on the Superior Court, have you had occasion to sit in proceedings involving accused juveniles?

A. Yes.

Q. And when was that, Judge?

A. From July, '78 to January of '80.

Q. And where did you sit?

A. Well, from July, '78 until January of '79 I was in part of what used to be the first district, that's my district, which was Bridgeport, Norwalk and Stamford. And from January, '79 to July, '79 I was in Waterbury where I sat part time on the juvenile bench there. And from July of '79 to January of 1980, I was in Danbury where I [632] sat on the juvenile bench part time.

Q. Could you please briefly describe your professional experience prior to becoming a judge?

A. Well, I was in general practice from 1938 to 1960 with some emphasis on labor law and lobbying for social and labor legislation. I was counsel for the state labor council, first, for the CIO and then AFL-CIO.

Q. Do you have a law degree?

A. Yes, from Yale.

Q. From what school do you have your undergraduate degree?

A. Wellesley.

Q. Could you please describe the professional organizations that are concerned with juvenile justice in which you have participated?

A. The National Council of Juvenile and Family Court Judges, the New England Council of Juvenile Court Judges, the American Bar Association Family Law Section. The National Advisory Committee on Juvenile Justice and Delinquency Prevention.

Q. What role did you play, if any, or what position did you hold in the National Council of Juvenile and Family Court Judges?

A. I'm a past president and have held offices up [633] to that point.

Q. When were you president of the Council?

A. 1976 to '77.

Q. What is the purpose of the National Council of Juvenile and Family Court Judges?

A. To improve and maintain the high standards for the exercise of juvenile jurisdiction by training judges who sit on juvenile matters both through a college which is maintained at the University of Nevada and also institutes that are held throughout the country either by the National Council alone or with the National Association of District Attorneys or the National Association of Public Defenders or, on occasion, the National Parent-Teachers Association.

Q. Did you participate in any way in developing the curriculum for the college that you just mentioned?

A. Yes. I was on the training committee before I was president and while I was president I was an ex officio member of it. I also taught at the college on occasion.

Q. * * * What position, if any, or positions have you held with the National Advisory Committee on Juvenile Justice and Delinquency Prevention?

A. Well, I have been a member of the standards [634] committee and I have just been appointed chairman of that committee.

Q. When did you become a member of the standards committee of the National Advisory Committee?

A. 1977, when I became a member of the national committee.

Q. Judge Driscoll, I show you New York State Family Court Act 739 in the McKinney's volume and the current paperback supplement and tell you that in New York that statute may be used by a Family Court judge to detain a juvenile who has been accused of a crime prior to the adjudication of his guilt on that crime.

Would you just look at it for a moment and familiarize yourself with it?

A. Yes.

Q. I direct your attention to Section 739 subdivision [a][ii] as it appears in the pocket part and ask you if you have an opinion as to whether or not there are juveniles who, if released prior to adjudication, are a risk of committing a crime?

Mr. Guggenheim: Objection, your Honor. It is beyond the competence of the witness to answer.

The Court: Well, I don't think that helps me at all. I'm going to sustain the objection because I [635] don't think the question is going to give me any benefit or is of any benefit to me. I'm sure there are people like that. I'm sure there must be people who are going to commit crimes. That's beside the point.

Ms. Gordon: First of all, it is the threshold point in this case. If there were not juveniles who had that risk, then we certainly would be discussing a statute in a system with no application. If the point is conceded—

The Court: There would be no due process issue.

Ms. Gordon: Exactly. That is certainly true. If that point is conceded then—

The Court: The point is[.] I think the question gets us nowhere so that I am sustaining the objection.

• • •

[638] Q. Judge Driscoll, based on your knowledge and experience, are pretrial juvenile detention standards that require a projection of whether a child will commit a crime in the future common in the United States?

A. Yes.

• • •

The Court: So I will be sure that I understand what your response means by way of comment, I gather that I am to understand that these kind[s] of standards are rather—detention that is, is practiced in the majority of the states?

The Witness: That has been so. At least the last compilation I saw was '75 and while there have

been some changes I don't think there have been that many.

The Court: So most of the states have some kind of proceeding similar to New York City, is that what you said?

The Witness: At least some kind of provision.

Q. Do you recall, Judge, I believe you mentioned [639] 1975, '75-'76, was the last compilation you were familiar with. Do you recall as of that time approximately how many jurisdictions in the United States had a standard such as * * * 739 (a)(ii)?

A. 46 i[n] what is known as the preventative detention.

* * *

Q. Judge Driscoll, I have given you [State's] Exhibit M for identification which purports to be a Section 1030 of a Chapter 35 of the Connecticut Practice Book. Would you please tell us what that document is?

* * *

A. Those are the Rules of Practice with respect to detention proceedings and the basis for detention.

* * *

[641] Q. Judge Driscoll, I direct your attention to subparagraph 1 of Section 1030 in what is now [State's] [642] Exhibit M in evidence, and ask you whether or not that subparagraph is the only court rule in Connecticut stating the basis for the detention of juveniles who are accused?

A. No, there is presently a statute which also has provisions with respect to detention.

Q. Is it the only court rule?

A. Only court rule, yes.

• • •

[643] Q. Turning back to the court rule, judge, for a moment, that is [State's] Exhibit M, and specifically subparagraph 1 of Section 1030, can you tell us approximately how long subparagraph 1 of Section 1030 has been in effect in Connecticut?

A. Well, at least since 1968, it may have been '67. And it may also have been prior to that but I know we have made major changes in our rule following the *Gault* case.

• • •

[644] What role if any did you play with respect to subparagraph 1 of Section 1030?

A. Well, I was one of six judges who drafted it or amended it. I have forgotten whether it was in effect or in what respect it was in effect before but something was in effect before. That is when there were three judges.

Q. Judge Driscoll, I ask you to turn to Section 4 of Public Act Number 79-581, that is now [State's] Exhibit N in evidence.

A. Yes.

Q. I ask you whether or not that is the only statute in Connecticut dealing with the basis for detaining juveniles accused of crimes?

A. Well, accused of crimes, yes.

Q. Judge, can you tell us what portion of subdivision 4 was new in 1979, namely, under this PA 79-581?

A. The part which appears in capitals.

[645] Q. Is that commencing "no child"?

A. "No child shall be placed in detention".

Q. And down to "superior court"?

A. Down to "superior court", yes.

The Court: The legislature codified the rules of the court and adopted them?

The Witness: That's right.

• • •

Q. Judge, since 1967-68 and while you have been on the Connecticut bench, have you had occasion to make determination under Section 1030 subparagraph 1 or this subdivision 4 of the Public Act of 1979?

A. Yes.

Q. And can you estimate for us approximately how many such determinations you have made, that is, applying the criteria that is set forth in subparagraph 1 of Section 1030?

A. Well, since, say, '68 I would estimate about 1500 to 2000. That's a low figure.

Q. I call your attention to the portion of Section 4 which is not in capitals but states that, "such child may, by the judge, be admitted to bail, pending final disposition, or may be released in the custody of [646] the probation officer, his parent or some other suitable person".

A. Yes.

Q. I ask you, Judge, prior to 1978, that is the merger of the Juvenile Court with the Superior Court, was it common for judges to admit accused juvenile delinquents to bail in Connecticut?

A. No, it was not.

• • •

[649] Q. Is the authority, the discretionary authority of a judge to admit a child to bail effective with respect to the detention criteria set forth in the balance of Section 1030 and specifically subdivision (b) of subparagraph 1 of Section 1030? I don't think I have made that much clearer but that is the question.

The Court: Do you understand the question, Judge?

The Witness: I know what she is trying to get at.

The Court: I will overrule the objection. Please explain it to me.

The Witness: It is why don't we use bail, I think that's the question. Why would we not use bail when it is so common[? T]he answer is, bail, in my opinion, is irrelevant in terms of having any effect on the child's pattern of delinquent behavior thereafter. Because bail with children under 16, which is the juvenile age in Connecticut, would have to be put up in practically every instance, if not all, by parents who might have a variety of reasons for not wanting to put up bail and also I don't think that whether a child or a parent can put up bail and is able to put up bail has any [650] relevance as to whether the child has a potential for committing delinquent acts. The parents who can put up the most money are sometimes the ones who have the least supervision. So I don't see it as a deterrent factor and I think it is also, if bail were used, it would obviously favor those who could pay.

The Court: But you are using the term, you are talking, am I correct, in terms of the issue as to

whether or not a child ought to be released or be detained, I suppose is better, that bail is not a consideration which you should think would be relevant?

The Witness: Yes.

The Court: There ought to be other considerations?

The Witness: Yes.

• • •

Q. Turning to the Connecticut standard itself, Judge Driscoll, as it is set forth in subparagraph 1 of Section 1030, for clarification, I would like to ask you what the meaning of a few terms is. In subdivision (b)—

• • •

[651] Q. What does the term "strong probability" mean?

A. Well, more likely than not.

Q. The subdivision (b) portion goes on to state "other offenses injurious to himself" and then states "or to the community".

What is the meaning of the term "injurious to himself" in that context?

A. Well, it has meant several things. It has meant if for example a youngster is constantly stealing cars, this can become very injurious to him because it usually results in a high speed chase, may result in his even being shot by a policeman. He could be engaged in a series of petty larcenies in which he may be caught by the person from whom he is stealing and that person may use undue force, or a policeman catching him in the act and then having him run, may also use force, like shooting at him.

Those are two that come to mind. And the very fact that a youngster continues to commit offenses [652] against the law, it seems to me put him in a position of jeopardy which is injurious to him. So that is one interpretation.

Q. Still within that subparagraph (b), judge, the use of the term "offense" both in [State's] Exhibit M and [State's] Exhibit N, does the term offense subsume a crime that is a felony or misdemeanor in Connecticut?

A. That's been the interpretation.

Q. I draw your attention to the phrase following (b) and that is (c) in Section 1030 subparagraph (1) which states, "reasonable cause to believe that the child's continued residence in his home pending disposition will not safeguard the best interests of the child and the community because of the serious and dangerous nature of the act or acts set forth in the attached delinquent petition".

I ask you whether or not that provision, that is (c), looks to what the child will do to the community potentially or what the community will do to the child?

A. Both.

Q. Could you explain?

A. Well, if, for example, a child has committed either an armed robbery or a murder and it is of someone within the area where he lives, the possibility of the [653] neighbors taking some action is a very good one. If he has committed an assault on another member of the family, the possibility of the family itself taking action is a very real one. Those are two things I can think of.

Q. Turning to the actual application of the standard in Connecticut, Judge Driscoll, I call your attention to the opening phrase of subparagraph (1) in [State's] Exhibit

M which also appears in Section 4 of [State's] Exhibit N, stating that "no child shall be placed in detention or thereafter held unless", and it goes on, "there is reasonable cause to believe" that he has committed the act in question.

I ask you, what papers or testimony, if any, are contemplated by the reasonable cause standard in Connecticut?

A. Well, 1032 subsection (2) does provide that any testimony which is material and relevant may be entered into evidence. It has been the practice of some of the judges to proceed on affidavits as to reasonable cause. My own practice has been to require testimony.

Q. Are the affidavits in support of reasonable cause, affidavits of people with direct knowledge of the events that constitute the crime?

A. Yes.

• • •

[656] Q. Judge Driscoll, let us assume that you have a juvenile who comes before you, accused of an act which would constitute a felony in Connecticut and you have [657] information about the child's home environment, the child's school environment, the nature of the charge for which he is currently accused and his prior record, if there is any, in terms of making a determination under subdivision (1) of Section 1030 and specifically under subdivision (b) of that section, strong probability that the child if released may commit another offense, what in that body of information do you look to in coming to your decision under the statute?

A. Well, I look to several things. I look to the record of prior delinquent conduct. I would look—

The Court: Prior delinquent conduct?

The Witness: Adjudication, yes. I would look to the time when this offense was committed to de-

termine, for example, if the child was out hours when normally he should be in and I would look—that would say something to me about the amount of control that his parents have over him and that would be a key factor, what control the parents have exercised or have attempted to exercise and whether there is really anybody who is in a position to control him and I would, therefore, also want to know whether he is going to school, for example, which is one of the things which indicates whether he is in or out of control.

[658] What else was there? I think that's about it.

The Court: So it would be important in your consideration as to whether the incident occurred let's say at 8 o'clock at night or 2 a.m.? That would make a difference?

The Witness: That would certainly make a difference to me. I would immediately deposit the question in my mind, "why, why was he out at that time?". I can understand that he was out going to a movie that he didn't go to, but it does say something about the parental supervision. Also the nature of the offense. I don't know if I said that before.

• • •

Q. • • • Do you distinguish—or on what basis do you distinguish between offenses, if you do distinguish between offenses, in making the judgment about detention versus release under probability of another offense, under that criteria?

A. Well, the extent of harm either to the child or to the community that might ensue from a repetition of that offense. That would be the thing I would consider.

[659] For example, car stealing, you know, the child is usually referred for taking an automobile without permission and not for stealing a car, which is a misdemeanor. But to my mind that puts everybody in the community in danger once that kid gets on the street with a car. If he has done this repeatedly, I think he is putting himself and everybody else in danger. For that reason, it would be a reason for detaining him because he has not controlled himself based on his prior record.

Q. You mentioned to Judge Carter, in terms of a prior record, you would look to prior convictions or [ ] prior arrests. Are they relevant in your exercise of your judgment?

A. Well, they are relevant but I must say I don't give them that much weight.

Q. One more hypothetical, Judge. Let's assume you have a child who has been arrested for breaking a shop window and to have stolen a small item from that shop window, nothing of substantial value. And at the time he comes before you, you are informed that he has nine prior arrests. Would you have occasion to consider whether or not that—would you have occasion to consider that child appropriate for detention?

A. Yes, I think it would depend on the time [660] factor, were those arrests immediately before this, were they 10 months ago, a year ago and also when was this done? I would like to look at that.

Q. In other words the time of the day?

A. Yes. And all of the other factors as well.

Q. It is essentially an individual determination based on the individual circumstances of each case?

A. That's right.

Q. * * * I show you [State's] Exhibit O for identification.

For the record, the portion I am concerned with is Section 22.4 as it appears on your sheet and it is on the sheet that you have entitled "NAC Report of the Task Force on Juvenile Justice and Delinquency Prevention 1976".

• • •

Q. Judge Driscoll, can you identify that standard for us, what is NAC?

A. National Advisory Committee on Juvenile Justice and Delinquency Prevention.

[661] Q. Is that the committee you mentioned to us before where you served on the standards committee?

A. Yes, I presently do.

Q. Were you on the standards committee when this section here noted as 22.4 was drafted and approved?

A. No.

Q. And did you come to find out about this standard in the course of your work on the committee?

A. Yes, we did the commentary on the standards. That's what our job was primarily.

The Court: Your committee?

The Witness: Yes, with one exception. With respect to status offenders.

• • •

[664] Q. Judge, do you approve or disapprove of this 22.4 standard?

• • •

A. Well, it is too limited, in my opinion, but—

Q. How is it too limited?

A. Well, it is restricting the future prediction not to whether the youngster will commit other offenses but whether he will inflict bodily harm or whether he himself will be subjected to bodily harm. I think—it doesn't have to be narrower, if you read two, which says a juvenile can't return home because there is no person able and willing to supervise him and care for him.

You could read into that a determination that a youngster is without proper supervision if he is [665] continuing to commit delinquent acts.

Q. So in terms of your own preference, would you prefer the current Connecticut standard over this standard?

A. Yes, I would.

Q. By the way, Judge Driscoll, I think I omitted to ask you, the organization with the subcommittee that has promulgated or is in the process of promulgating Section 22.4, what is the purpose of the National Advisory Committee?

A. Well, I guess the purpose of the committee is to advise the President, Congress and the Administrator of the Juvenile Justice and Delinquency Prevention Act with respect to the way that the Act should be administered. I should say also that also as a separate part of its purpose is to promulgate standards on the administration of juvenile justice.

Q. Of which Section 22.4 is an example?

A. Part of.

• • •

[666] Q. Did you participate in developing the Institute of Judicial Administration, American Bar Association standards, commonly referred to as the ABA-IJA standards?

A. Not in drafting the original drafts. I did sit on the drafting committee of the Family Law Section which reviewed the drafts prior to the presentation to the ABA or the House of Delegates.

Q. I show you Section 6.6 of the Guidelines for Status Decision which I think the record should indicate apply to the intake officials * * * but as one goes on in the volume and gets to the juvenile court judge, it is stated in the volume that the same standard applies.

I would just ask you to look at Section 6.6 and I call your attention to the fact that that is the 1977 copy. Would you just look that over. It is 6.6 of the interim status volume.

* * *

[667] Q. Do you have an opinion as to whether or not this standard, that is 6.6(a), is an appropriate basis for the detention, the pretrial detention of juveniles?

A. No. I think it is too limited.

Q. In what sense, Judge, is it too limited?

A. Well, first of all, it is limited to a crime of violence which the sentence has to be one year or more. You have to have that plus one or more of the other factors which is the crime has to be first or second degree murder or the child must be [o]n an interim status which is under (b), under jurisdiction of the court in a criminal case or on probation or he must be an escapee or [668] have a demonstrable or recent record of willful failure to appear or be a fugitive.

There is no provision there for detaining the youngster who has a record of repeating other kinds of acts that are not crimes of violence or, like I indicated, car theft or stealing, where because of the repeated nature of the acts and the time frame in which they are committed, say, maybe a week ago where he has committed another act or two weeks ago and has been released and going back and then comes back. This time there is no basis under this for detaining that child, prevent him from doing other criminal acts. I think that's too narrow.

• • •

[669] Q. Judge Driscoll, what state interest supports a detention standard which looks to the risk of a juvenile committing a crime if released, if any such interest?

A. Well, the basic interest is, of course, the protection both of the community and of the child. I would think that —of course there is a question now under a lot of these standards of whether children are children and whether they are adults. That's the basic premise of a lot of standards that they should be treated as adults.

My feeling is that if we are going to continue to determine that children are different from adults, then we have to look at what that difference is and the difference as far as children is concerned is that they are entitled to protection, to control, to guidance from responsible adults and if their parents or guardian or custodians or the people responsible for them are unable to provide the kind of control that keeps them, for [670] example, from committing crimes, then the state has to intervene to do that.

• • •

Cross-examination by Mr. Guggenheim:

• • •

[673] Q. Now, in focusing on the pretrial detention question in a delinquency proceeding, do you favor the detention of a juvenile in part for the purpose of helping that child?

A. Only in the sense of protecting him from harm which might be occasioned by getting into further delinquent behavior which in turn generates action on the part of either police or the people with whom he is in contact with in committing the delinquent behavior.

• • •

[675] Q. Is it within the ability of a judge in making the decision to detain under the scheme which you have operated as a judge to take into account previous arrests?

A. Yes, it is.

• • •

[676] [*Examination by the Court:*]

The Court: Judge Driscoll, I am quite frank to tell you that I am very troubled by this law. I have had no experience as you have with dealing with minors.

What is, in your view, or would be the rationalization for detaining a minor [ ], which seems to me to be contrary to the principles in the administration of law which [are] utilized in respect to adult crime?

The Witness: With respect to adult crime, you let them out on bail and you let them out not on the basis of even what they have done or what they are likely [677] to do but whether they have any money. So it doesn't seem to me that—

The Court: Well, not entirely. Not over on this side. Sometimes on this end—

The Witness: That's the way it works in the state court.

The Court: We let them out on recognizance and the theory is the purpose of that is not whether they will be free or what the nature of the crime is but whether or not they are going to show up.

The Witness: That's true. But you are dealing with people who are assumed to have the capacity to take care of themselves. Whereas you are dealing with children, by definition, they are not assumed to have that capacity. They are assumed to be subject to the control of their parents.

• • •

[678] The Court: What do you feel is being the minimum that you—let's just assume that a juvenile comes before you with one of these matters and you have to make a determination. Would you be as expansive as you can and tell me all of the things that you would want as a minimum for you in terms of making that determination?

The Witness: Well, I would want the nature of the crime, the circumstances, the extent that they can be determined on a reasonable cause basis.

[679] The Court: You, I understand, prefer to have that done by testimony?

The Witness: By testimony.

The Court: Live witnesses?

The Witness: That's right. I would want to have the record of any prior convictions. I would consider

recent arrests. If there had been a whole string culminating in this, that would make an impression, coupled with everything else. I would like to know what the supervision is going to be for. Whether he is under court supervision or no supervision or whether his parents have been exercising any kind of control, what the attitude of his parents is in terms of being willing to make changes in supervision.

• • •

[680] The Court: Anything else?

The Witness: I would want to know if there are any psychological or psychiatric evaluations of the child and his total background as far as it can be determined at that time. A first offender, you normally wouldn't get that much, and a first offender normally would not be held except for a very serious act or lack of parental supervision.

• • •

[681] School record, whether he's been going to school, where he is in school, agewise, gradewise; whether that indicates some kind of problem, you know, learning disability or retardation or something of that sort. I think that's about it.

• • •

The Court: Now, I gather you said—you said something and I want to get clear on this. Is this a policy consideration on your part that unless, at least I interpret it as meaning this, unless the crime is a very serious one that first offenders, I gather, you don't normally detain them?

The Witness: That's right.

• • •

[683] *Redirect Examination by Ms. Gordon:*

• • •

[684] Q. The detention hearings at which you find reasonable cause, if you do, and consider the detention question, approximately how long do those hearings take?

A. Well, they can take anywhere from 20 minutes to several hours.

Q. Is part of that time used for the reasonable cause assessment?

A. Yes.

Q. You indicated that on the occasion when the probation officer and those individuals are before you, you take testimony?

A. Yes.

Q. Does Connecticut require that the probation officer or the parent testify or can they merely report?

A. Well, it is not required that they testify. I require them to. The rules don't require it.

• • •

Q. Can you tell us what your definition of a serious crime is? I believe you indicated to Judge Carter that the first offender would rarely be held unless it was a serious crime. What is a serious crime?

[685] A. Well, I think a crime which involved serious bodily injury to anyone or one which involved the use of a weapon, like a gun. I have considered taking cars, as I have indicated, when it is repeated as a serious crime because as I have indicated it puts everybody else on that road in danger, including the child.

Q. Does the threatened use of force as distinguished from the actual use of force come within your definition of a serious crime?

A. Yes, a gang type thing, for example, I would consider a very serious matter.

Q. Let me give you just one example. Let's say three boys of the age of 15 surround a woman on the streets of New York and do not show any weapons, but seek to take her purse, is that—

A. That's serious.

Q. Is that a serious crime?

A. Yes.

• • •

Stipulation and Order
(Excerpts)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

77 Civ. 6176 (RLC)

[TITLE OMITTED IN PRINTING.]

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the petitioners and the Attorney General *Pro Se*:

• • •

2. The trial exhibits of the petitioners and the Attorney General *P o Se* are as set forth on the annexed exhibit lists. The lists have been modified since the close of trial without objection from either side. Petitioners have included PX 37 A-D [excerpts from the (Draft) 1979 N.Y.S. Division for Youth Annual Report], PX 38 (excerpts from the 1978 Annual Report of the Office of Court Administration) and PX 44 [excerpts from the (Draft) 1980 Vera Institute Family Court Disposition Study]. The Attorney General has included SX O—SX R [extrapolations from data contained in the (Draft) 1979 N.Y.S. Division for Youth Annual Report], SX S (Table 48, 1979 United States Census) and SX T [Order in *Martarella* v. *Kelly*, 71 Civ. 3159 (MEL) (SDNY Mar. 26, 1975]. PX 37 A-D and SX O—SX R include data requested by the court during trial to the extent it was available or could be generated in a timely manner.

• • •

Dated: New York, New York
May 30, 1980

[Attorneys' subscriptions and addresses omitted in printing.]

SO ORDERED: 6/3/80

/s/ ROBERT L. CARTER
U.S.D.J.

Stipulation and Order (Exhibits' List—Petitioners)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

77 Civ. 6176 (R.L.C.)

[TITLE OMITTED IN PRINTING.]

PETITIONERS' EXHIBITS[†]

1a—Transcript[s] of Detention [and Probable Cause] Hearings, December 14 and 19, 1977, *Matter of Gregory Martin*, Bronx Docket No. D3900/77
1b—Petition of Delinquency for Gregory Martin
1c—Family Court Docket Entries for Gregory Martin
1d—Final Order of Disposition for Gregory Martin

2a—Transcript of Detention Hearing, March 15, 1978, *Matter of Luis Rosario, et al.*, Kings Docket No. D1310/78
2b—Petition of Delinquency for Luis Rosario
2c—Family Court Docket Entries for Luis Rosario

3a—Transcript of Detention Hearing, March 27, 1978, *Matter of Kenneth Morgan*, Queens Docket No. D763/78
3b—Petition of Delinquency for Kenneth Morgan
3c—Family Court Docket Entries for Kenneth Morgan
3d—Final Order of Disposition for Kenneth Morgan

4a—Transcript of Detention Hearing, August 24, 1977, *Matter of Vincent Harris, et al.*, Kings Docket No. D5050/77
4b—Petition of Delinquency for Vincent Harris
4c—Family Court Docket Entries for Vincent Harris
4d—Final Order of Disposition for Vincent Harris

[†] Petitioners' trial exhibits are included in Document Number 26 of the Record on Appeal. They are marked as shown on the following list and are in sequence.—*Ed.*

Stipulation and Order
(Exhibits' List—Petitioners)

4e—Petition of Delinquency for Phil Hanna, D5051/77
4f—Family Court Docket Entries for Phil Hanna
4g—Final Order of Disposition for Phil Hanna D5052/77
4h—Petition of Delinquency for Calvin Jenkins
4i —Family Court Docket Entries for Calvin Jenkins
4j —Final Order of Disposition for Calvin Jenkins

5a—Transcript of Detention Hearing, September 12, 1978, *Matter of James Price*, Bronx Docket No. D3111/78
5b—Petition of Delinquency for James Price
5c—Family Court Docket Entries for James Price

6a—Transcript of Detention Hearing, November 28, 1977, *Matter of Johnny McArthur*, Kings Docket No. D6567/77
6b—Petition of Delinquency for Johnny McArthur
6c—Family Court Docket Entries for Johnny McArthur
6d—Final Order of Disposition for Johnny McArthur

7a—Transcript of Detention Hearing, November 12, 1976, *Matter of Christopher Cox*, et al., Kings County Docket Nos. D8571/76; D8567/76; D8580/76; D8576/76
7b—Petitions of Delinquency for Christopher Cox
7c—Family Court Docket Entries for Christopher Cox
7d—Final Order of Disposition for Christopher Cox
7e—Petitions of Delinquency for Wade Forde, D8577/76 and D8582/76
7f—Family Court Docket Entries for Wade Forde
7g—Final Order of Disposition for Wade Forde

8a—Transcript of Detention Hearing, March 17, 1978, *Matter of Francisco Ramos*, Kings Docket No. D1359/78
8b—Petition of Delinquency for Francisco Ramos
8c—Family Court Docket Entries for Francisco Ramos

Stipulation and Order
(Exhibits' List—Petitioners)

9a—Transcript of Detention Hearing, April 6, 1977, *Matter of Darryl Larkin*, Kings Docket No. D2068/77
9b—Petition of Delinquency for Darryl Larkin
9c—Family Court Docket Entries for Darryl Larkin
9d—Final Order of Disposition for Darryl Larkin

10a—Transcript of Detention Hearing, October 20, 1977, *Matter of Jerome Basnight*, Bronx Docket No. D3277/77
10b—Petition of Delinquency for Jerome Basnight
10c—Family Court Docket Entries for Jerome Basnight
10d—Final Order of Disposition for Jerome Basnight

11a—Transcript of Detention Hearing, March 25, 1977, *Matter of Jose Cruz*, Kings Docket No. D1835/77
11b—Petition of Delinquency for Jose Cruz
11c—Family Court Docket Entries for Jose Cruz
11d—Final Order of Disposition for Jose Cruz

12a—Transcript of Detention Hearing, December 13, 1977, *Matter of Edwin Rodriguez, et al.*, Bronx Docket No. D3887/77
12b—Petition of Delinquency for Edwin Rodriguez
12c—Family Court Docket Entries for Edwin Rodriguez
12d—Final Order of Disposition for Edwin Rodriguez
12e—Petition of Delinquency for Edwin Ascencio, D3888/77
12f—Family Court Docket Entries for Edwin Asencio
12g—Final Order of Disposition for Edwin Asencio

13a—Transcript of Detention Hearing, April 12, 1978, *Matter of Juan Santiago*, Bronx Docket No. D1221/78
13b—Petition of Delinquency for Juan Santiago
13c—Family Court Docket Entries for Juan Santiago
13d—Final Order of Disposition for Juan Santiago

Stipulation and Order
(Exhibits' List—Petitioners)

14a—Transcript of Detention Hearing, July 5, 1978, *Matter of James Peebles*, Kings Docket No. D3701/78
14b—Petition of Delinquency for James Peebles
14c—Family Court Docket Entries for James Peebles
14d—Final Order of Disposition for James Peebles

15a—Transcript of Detention Hearing, May 24, 1978, *Matter of Jeffrey McCain*, Bronx Docket No. D1767/78
15b—Petition of Delinquency for Jeffrey McCain
15c—Family Court Docket Entries for Jeffrey McCain
15d—Final Order of Disposition for Jeffrey McCain

16a—Transcript of Detention Hearing, March 17, 1977, *Matter of Carl Harris, et al.*, Kings Docket No. D1615/77
16b—Petition of Delinquency for Carl Harris
16c—Family Court Docket Entries for Carl Harris
16d—Final Order of Disposition for Carl Harris
16e—Petition of Delinquency for Michael Taylor, D1614/77
16f—Family Court Docket Entries for Michael Taylor
16g—Final Order of Disposition for Michael Taylor

17a—Transcript of Hearing, July 13, 1977, *Matter of Victor Melendez*, Kings Docket No. D4319/77
17b—Petition of Delinquency for Victor Melendez
17c—Family Court Docket Entries for Victor Melendez
17d—Final Order of Disposition for Victor Melendez

18a—Transcript of Detention Hearing, December 1, 1976, *Matter of Tyrone Parson*, Kings Docket No. D9000/76
18b—Petition of Delinquency for Tyrone Parson
18c—Family Court Docket Entries for Tyrone Parson
18d—Final Order of Disposition for Tyrone Parson

19a—Transcript of Detention Hearing, March 5, 1976, *Matter of Geraldo Delgado*, Bronx Docket No. D802/76
19b—Petition of Delinquency for Geraldo Delgado

Stipulation and Order
(Exhibits' List—Petitioners)

19c—Family Court Docket Entries for Geraldo Delgado
19d—Final Order of Disposition for Geraldo Delgado

20a—Transcript of Detention Hearing, October 27, 1977, *Matter of Tony Gomez,* Bronx Docket No. D3342/77
20b—Petition of Delinquency for Tony Gomez
20c—Family Court Docket Entries for Tony Gomez
20d—Final Order of Disposition for Tony Gomez

21a—Transcript of Detention Hearing, July 23, 1976, *Matter of Maurice Dunaway,* Kings Docket No. D5936/76
21b—Petition of Delinquency for Maurice Dunaway
21c—Family Court Docket Entries for Maurice Dunaway
21d—Final Order of Disposition for Maurice Dunaway

22a—Transcript of Detention Hearing, May 3, 1977, *Matter of Daniel Nelson,* Kings Docket No. D2697/77
22b—Petition of Delinquency for Daniel Nelson
22c—Family Court Docket Entries for Daniel Nelson
22d—Final Order of Disposition for Daniel Nelson

23a—Transcript of Detention Hearing, September 20, 1977, *Matter of Daniel Gregoire,* Kings Docket No. D5481/77
23b—Petition of Delinquency for Daniel Gregoire
23c—Family Court Docket Entries for Daniel Gregoire
23d—Final Order of Disposition for Daniel Gregoire

24a—Transcript of Detention Hearing, August 31, 1977, *Matter of Carlos Lopez,* Kings Docket No. D5166/77
24b—Petition of Delinquency for Carlos Lopez
24c—Family Court Docket Entries for Carlos Lopez
24d—Final Order of Disposition for Carlos Lopez

25a—Transcript of Detention Hearing, June 1, 1979, *Matter of Kevin West,* Bronx Docket No. D2066/79
25b—Petition of Delinquency for Kevin West
25c—Family Court Docket Entries for Kevin West
25d—Final Order of Disposition for Kevin West

Stipulation and Order
(Exhibits' List—Petitioners)

26a—Transcript of Detention Hearing, June 6, 1979, *Matter of Carlos Fargas*, Bronx Docket No. D2112/79
26b—Petition of Delinquency for Carlos Fargas
26c—Family Court Docket Entries for Carlos Fargas

27a—Transcript of Detention Hearing, June 1, 1979, *Matter of Jody Allen*, Kings Docket No. D3373/79
27b—Petition of Delinquency for Jody Allen
27c—Family Court Docket Entries for Jody Allen
27d—Final Order of Disposition for Jody Allen

28a—Transcript of Detention Hearing, May 31, 1979, *Matter of Emmett Jacobs*, Richmond Docket No. D333/79
28b—Petition of Delinquency for Emmett Jacobs
28c—Family Court Docket Entries for Emmett Jacobs
28d—Final Order of Disposition for Emmett Jacobs

29 —Withdrawn

30 —Affidavits by L. Kevin Sheridan and Herbert Sturz in *People ex rel. Dale* v. *Davis*, Court of Appeals, State of New York

31a-
31j —Photographs of Spofford Detention Center

32 —Mayor's Task Force on Spofford—First Report, June 1978

33 —Report of the Governor from Kevin M. Cahill, M.D., Special Assistant to the Governor on Health Affairs —Governor's Panel on Juvenile Violence, January 1976.

34 —Withdrawn

35a—Transcript of Detention Hearing, Aug. 21, 1979, *Matter of James Ancrum*, Bronx Docket No. D27971/79
35b—Criminal Court Felony Complaint for James Ancrum, Bronx Docket X-923711

Stipulation and Order
(Exhibits' List—Petitioners)

35c—Order of Removal to Family Court for James Ancrum
35d—Family Court Docket Entries for James Ancrum
35e—Final Order of Disposition for James Ancrum

36 —Juvenile Detention in New York State, 1977, Policy and Practice—Final Report—New York State Division for Youth, Detention Study Unit

37 —New York State Division for Youth Detention System Admission/Release Statistics 1/1/79 to 12/31/79

38 —Excerpts of Twenty-third Annual Report, 1978, The Administrative Board of the Judicial Conference, The Judicial Conference and the Office of Court Administration—State of New York (March, 1978)

39 —New York City Department of Juvenile Justice Monthly Population Report for Spofford Juvenile Center, January, 1980

40 —Curriculum Vitae of Leslie T. Wilkins

41 —Curriculum of L. David Zinn, M.D.

42 —Transcript of Detention Hearing, February 29, 1980, *Matter of Ramon Ramos,* Kings Docket No. D1356/80

43a—Transcript of Detention Hearing, July 7, 1978, *Matter of Douglas McLaughlin,* Kings Docket No. D3773/78
43b—Family Court Order Dismissing Petition for Douglas McLaughlin
43c—Petition of Delinquency for Douglas McLaughlin
43d—Family Court Docket Entries for Douglas McLaughlin

44 —Family Court Disposition Study, First Draft—Vera Institute of Justice

Stipulation and Order (Exhibits' List—State)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

77 Civ. 6176 (RLC)

[TITLE OMITTED IN PRINTING.]

TRIAL EXHIBITS FOR THE ATTORNEY GENERAL, PRO SE*[†]

A	Issues Paper on Juvenile Detention, Vera Institute of Justice (July 17, 1979)
B1	Spofford Juvenile Center Detention Screening Form
B2	Court Assessment Unit Detention Screening Form
C	Court Assignment [Assessment] Unit Procedures —Guidelines
D	Withdrawn
E1-23	Photographs of Monroe County Children's Center (Oct. 10, 1978) and Affidavit of Authenticity
**F	M.A. McDiarmid, "Juvenile Pre-Trial Detention", XXXIV (3) National Legal Aid and Defender Association Briefcase 77 (Apr.-May 1977)

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* For purposes of post-trial submissions all exhibits offered by the Attorney General, *Pro Se*, are designated, "State's Exhibit —" or "SX —", rather than "Defendant's Exhibit —" or "DX —", to reflect the Attorney General's status as an intervenor in support of the constitutionality of New York Family Court Act § 739(a)(ii), rather than as a party defendant or respondent.

[†] The Attorney General's trial exhibits are included in Document Number 26 of the Record on Appeal. They are marked as shown on the following list and are in sequence.—*Ed.*

** SX F is offered for the proof of the facts state therein and not for the opinions and/or conclusions of the author.

G id. Secure Detention of Juveniles and Alternatives to Its Use, Series A Number 18 Phase 1 Report, p. 2, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, United States Department of Justice (Aug. 1977)

H Non-Secure Detention Facilities in New York City (Oct. 15, 1979)

I Guide for Preparing Court Assessment Unit Screening Form

J There is no Exhibit J.

K (Draft) Spofford Juvenile Center Detention Screening Procedures Manual (Vera Institute)

L Outline of Interview with Child and Conversation with Parent or Guardian, Spofford Juvenile Center Detention Screening Unit (Vera Institute)

M Connecticut Practice Book Sec. 1030, Superior Court Juvenile Detention Standard

N Connecticut Public Act No. 79851 (Jan. 1979)

O 1979 Admission and Release Statistics, Non-New York City Secure Facilities

- O1 Ethnicity Totals, Admission Authority and Admission/Release by County
- O2 Crimes
- O3 Release Statistics

P 1979 Admission and Release Statistics, Non-New York City Non-Secure Facilities

- P1 Ethnicity Totals, Admission Authority and Admission/Release by County

P2 Crimes

P3 Release Statistics

Q 1979 Admission and Release Statistics, New York City Secure Facilities

Q1 Ethnicity Totals, Admission Authority and Admission/Release by County

Q2 Crimes

Q3 Release Statistics

R 1979 Admission and Release Statistics, New York City Non-Secure Facilities

R1 Ethnicity Totals, Admission Authority and Admission/Release by County

R2 Crimes

R3 Release Statistics

S Table 48, General Characteristics by Race for Urban and Rural Residence, 1970 United States Census

T Order in *Martarella* v. *Kelly*, 71 Civ. 3159 (MEL) (SDNY 1975)